REPORT

OF THE

ATTORNEY GENERAL

OF THE

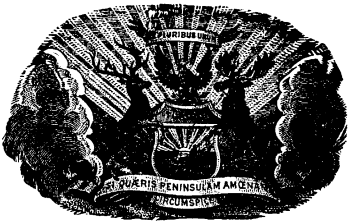
STATE OF MICHIGAN

FOR THE

YEAR ENDING JUNE 30, A. D. 1892

ADOLPHUS A. ELLIS

ATTORNEY GENERAL



BY AUTHORITY

LANSING
ROBERT SMITH & CO., STATE PRINTERS AND BINDERS.
1892

REPORT.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 1, 1892.

To the Governor and Legislature of the State of Michigan:

I have the honor herewith to submit, in compliance with law, the annual report of the Attorney General of all business transacted by this department from July 1, 1891, to July, 1, 1892, including an abstract of the reports of the Prosecuting Attorneys of the State, showing the criminal prosecutions, penalties inflicted, and other items pertaining to the administration of justice.

The various matters embraced in said report are covered by schedules hereto attached from "A" to "J" inclusive.

1. Schedule "A" contains a full statement of all criminal cases brought to the Supreme Court on exceptions, writ of error, or *certiorari*, which are disposed of or pending, in which the Attorney General has appeared.

In this schedule I have endeavored, under the title of each cause, to give a short statement of the facts, the points in dispute, and the rulings of the court thereon.

2. Schedule "B" contains a list of *mandamus*, *quo warranto*, and other proceedings commenced by the Attorney General in behalf of the State, or commenced by other parties, in which the State is directly interested.

The decision of the Supreme Court in a great many of these cases is announced orally, no written opinion being filed, and unless a person is in court at the time of the announcement of the decision, he has no way, in the records of the court, to ascertain the reasons announced by the court for its decision.

These decisions embrace questions of criminal practice, the constitutionality of laws, rights of various State and county officers, rights to public office, and various other questions that are of great interest to the people and the legal profession generally.

In order that the reasons of these decisions might be known to those interested therein, in the annexed schedule I have given a short statement of the facts presented to the court, the points in dispute, and the reasons assigned by the court for their ruling thereon.

3. Schedule "C" contains a list of chancery cases commenced or completed between July 1, 1891, and July 1, 1892, and cases now pending, in which the State is directly interested.

4. Schedule "D" contains a list of *quo warranto* and other special proceedings authorized by the Attorney General in the name of the State, but directed by and at the expense of the parties interested.

In the last two schedules named I have given briefly a statement of the facts of the case, and the rulings of the court, if decision has been rendered, so that persons interested in such proceedings may understand the nature and disposition of the case.

5. Schedule "E" contains a list of chancery cases commenced in the various circuit courts in chancery, in which the State is somewhat interested and to which some State officer was made a party.

These cases, in accordance with the usual practice, have been referred to the Prosecuting Attorneys of the various counties, in which they are pending and left in their charge. No report relative to these cases is made to the Attorney General's office, and I am unable to make, from any record in this office, any definite statement as to results.

6. Schedule "F" contains a statement of moneys received by the Attorney General and turned over to the State Treasurer. The money was received for delinquent specific taxes and also for taxes collected of the bondsmen of a sheriff who had collected the taxes but never returned them.

7. Schedule "G" contains a list of insurance companies where articles of association of such companies, or amendments to such articles or extension of the charter, have been examined and approved by the Attorney General in pursuance of law.

8. Schedule "H" contains an abstract of the reports of the Prosecuting Attorneys for the year ending June 30, 1892.

I have followed the same form in making this schedule as used in my previous report. Previous to the last report of this department it had been customary to simply print the Prosecuting Attorney reports verbatim as they were furnished to this department. Believing that it was the intention of the law to print simply an abstract, showing the total number of prosecutions and the results in the State, I changed that system.

The report presents at once a complete statement of the number of prosecutions in the entire State, with their results, without wasting the time to add together the results in the various counties.

The difference in the number of prosecutions during the past and the preceding year is quite noticeable. The number of prosecutions for the year ending June 30, 1891, is 15,747 and the convictions 9,812. The number of prosecutions for the year ending June 30, 1892, is 24,537, and the convictions 17,489.

The increase is largely in petty crimes, consisting of disorderly persons and that class of crime which is the result of idleness and lack of steady employment.

There can be no question but what the stringency of the times—the large number of men unemployed in the State, has added materially to the number of prosecutions and the expense attending the same.

A large per cent of those who are denominated "disorderly persons," and who have been convicted and sent to the county jails for short periods, are persons who in common language are denominated "tramps," who

spend their time in summer tramping throughout the country and in the winter board at the common jail at the expense of the tax-payers.

The attention of the Legislature is respectfully called to this matter, and I would suggest that a change be made in the penal laws of the State, so that men who spend a large per cent of their time in the common jails of the State, really in idleness and being boarded at the public expense, may be placed at work by the proper authorities upon the public streets, or at some other employment that will be of benefit to the industrial citizens of the State, and at the same time not come in competition in an injurious way with the laboring man who supports himself and family by working for wages by the day.

The original reports of the prosecuting attorneys are bound and on file in this office, where they can be examined at any time.

9. Schedule "I" contains the address of the public prosecutors, and the number of persons prosecuted in each county during the current year. The punishment for the offense and the result will be found in the aggregate of all the counties in schedule "H."

10. Schedule "J" contains the opinions written by the Attorney General during the fiscal year.

By reason of the session of the Legislature and the change in tax and election laws, a great many questions have arisen and 147 formal opinions have been given between June 30, 1891 and June 30, 1892, while the number of questions that have been answered relative to State matters, by letter, and which do not appear in the published report, is very large, numbering into the thousands.

A number of opinions concerning the election law were printed in pamphlet form and forwarded to the members of the boards of election inspectors.

Four opinions relative to the tax law were also printed and forwarded to the supervisors and other officers interested in the enforcement of the new tax law.

As the opinions relative to the election and the tax laws relate to matters in which the local officers are constantly asking for advice, I have deemed it expedient to order an additional supply of this report and forward copies to those officers who need the same.

In the report of 1891, I called attention to the change in Act No. 72 of the Session Laws of 1887, by which the law requiring the prosecuting attorneys in every instance to follow their case to the Supreme Court, has been so amended that the prosecuting attorneys were required to furnish to the Attorney General briefs in all cases, but were not required to attend the Supreme Court unless especially requested by the Attorney General so to do.

I suggested in that report that the change, while it would increase somewhat the labors of the Attorney General's office, would no doubt result in a large saving to the tax-payers of the State.

The result has been as we anticipated. Under the law as it existed previous to the amendment made by the last legislature, the allowance made for prosecuting attorneys from June 30, 1889, to June 30, 1890, was $2,289.18. Under the law as it now stands the allowance for prosecuting attorneys from June 30, 1891, to June 30, 1892, was $419.27, resulting in a net saving to the tax-payers of $1,869.91.

The number of prosecutions in 1889 and 1890 were not near as many as in 1890 and 1891; but by reason of a change of the law, a part of the years 1890 and 1891 was under both systems, and hence I can only compare the years in which the old system was used exclusively and the years in which the new system was used exclusively. Had the years 1890 and 1891 been completed under the old system the difference between that and the past year would have been very much greater than what is given by the above figures.

The change made in the law by the legislature of 1891 requiring the State work, appertaining to this department, to be done by the Attorney General, or under his supervision, has increased very largely the work of this department, yet with good clerical help and an efficient chief clerk I have been able to take care of the work in a reasonable manner, without employing any extra help. The savings in this department during the last fiscal year, by reason of the change in the manner of conducting the business, has been very considerable. The amounts saved in outside help, as compared with the preceding administration, in the last current year so far as the accounts allowed by the Board of State Auditors are concerned, is $11,000. This, however, does not embrace all expenses, because previous to the change made in the law each State institution deemed itself authorized to employ outside help and to pay the same out of the moneys appropriated for the general expenses of State institutions. These accounts in some cases amounted to very large sums. In a single case of Johnson vs. Watkins, Warden of Ionia State House of Correction, an account was allowed and paid out of the State money of more than $2,700 for legal assistance and expenses.

Since the change in the law the departments and State institutions having need of legal assistance, have referred their matters to this department, and the same have been taken care of without extra expense to the State. A few institutions, however, overlooked the law or disregarded it, and attempted to continue the old practice of employing outside assistance. But so far as this department is advised up to date, none of the bills so contracted have been paid out of the State funds.

With a year and a half experience in this office I am more than ever convinced that all work done for, or in the interest of the State, should be referred to this department; and that by making a sufficient appropriation for the department of the Attorney General, and requiring all work to be done by or under his supervision, a great many thousand dollars may be saved each year to the tax-payers.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

SCHEDULE A.

This schedule contains a full statement of all criminal cases brought to the Supreme Court on exceptions, writ of error, *certiorari* and *habeas corpus*, whether disposed of or pending, in which the Attorney General has appeared.

The People vs. Augustus Bane. Exceptions from Muskegon Circuit Court. Cruelty to animals. Affirmed.

Defendant was complained against before a justice of the peace, under section 9391, Howell's Statutes, for cruelly mutilating a certain horse by slitting his ear, and otherwise cutting said horse with a knife. He was convicted and appealed to the circuit, where he was again convicted, and came to the Supreme Court on exceptions before sentence. The testimony tended to show that respondent had hitched the horse to a buggy in a hotel barn; that the horse refused to start when told, threw its head and fell upon the floor, whereupon respondent jumped out of the buggy, and angrily plunged the blade of his pocket knife into the roof of the horse's mouth; that, the horse still refusing to go, the same thing was twice repeated; that, because he still refused to go, respondent cut a slit from one and a half to two inches and a half in length in the horse's ear; that, being then unable to start the horse, respondent jumped out and cut a slit about three inches in length in one of the animals fore-legs; that the horse bled freely with each cutting; that when asked by the officers, who then appeared upon the scene, what was going on, respondent replied, "I am putting my mark on this damned horse," that respondent was under the influence of liquor at the time, and, in the course of the conduct described, said, addressing the horse: "Damn you, if you get the start of me, it will be the first horse that ever did;" that immediately after his arrest respondent had given as a reason for his conduct, that the horse was balky, and refused to go. The defense was, that the horse had the blind staggers, and that bleeding was the usual remedy.

Held, that a witness who saw the horse at the time, and who stated that he had had considerable experience with horses, that he had seen several horses afflicted with the blind staggers, and was familiar with the symptoms, was competent to give his opinion as to whether the horse had the blind staggers.

Held further, that in such case a veterinary surgeon, after being informed as to the conduct and actions of the horse, might be asked whether, in his opinion, he had the blind staggers.

Reported in 50 N. W. Rep., 323.

The People vs. Thomas Murray. *Certiorari* to Recorder's Court of Detroit. Murder. Sentenced to solitary confinement at Jackson for life. Reversed and new trial granted.

The respondent was convicted, upon an information charging him with the murder of Edward Shoemaker, in the Recorder's Court for the city of Detroit, presided over by the Hon. F. H. Chambers, associate judge. The respondent was sentenced to be imprisoned in solitary confinement, at hard labor, for life, in the State's prison at Jackson, and is now undergoing sentence. The writ of *certiorari* was based upon the petition of Oscar M. Springer, the attorney for respondent, made and sworn to in his behalf, and set forth that the respondent was not accorded a public trial; that the public were excluded from day to day from the court room during the progress of defendant's trial, as appears by the affidavits of Charles Flowers, William May, John B. Stadler, Michael McKeogh, Henry S. Self, Joseph Boushey, William Nash, and Thomas M. Donnelly, filed with said petition and made a part thereof.

Held, 1. That under Art. 6, Sec. 28 of the constitution, which declares, "In every criminal prosecution the accused shall have the right of a speedy and public trial;" and Howell's Statutes, Sec. 7244, which provides that "the sittings of every court within this State shall be public," it was error for the court, where one was on trial for murder, to order the officers to exclude all from the court room except "respectable citizens."

2. The fact that entrance to the court room was possible through the clerk's office, or other private ways, was no answer to the refusal of admission at the public entrance.

3. Such error was properly brought to the Supreme Court by *certiorari* rather than by bill of exceptions.

4. For such error the accused was not discharged as having been once in jeopardy, but a new trial was granted, and the case treated as if judgment had been arrested on motion of accused, and the judgment set aside.

Reported in 50 N. W. Rep., 995.

The People vs. James Miller, et al. Error to St. Joseph county. Violation of fish law. Affirmed.

The respondents were convicted of the violation of Act No. 512, Local Acts 1887. This act is entitled "An act to prevent the destruction of fish in Klinger Lake." Section 1 makes it unlawful for any person to take, catch, or kill any fish in said lake for the term of ten years, with spear, net, grap-hook, or by the use of jacks or artificial light of any kind, or any kind of fire-arms or explosive material or other device, except by hook and line. Section 2 imposes a penalty for any violation of the act. Three objections were raised to the validity of the act: (1) That the object was not expressed in its title; (2) that the title was inconsistent with the provisions of the act; (3) that the title to the act did not indicate that there was any punishment attached to a violation of its provisions.

Held, that the object of the act was fairly indicated by its title, "An act to prevent the destruction of fish in Klinger Lake," and hence the act was not unconstitutional on the ground that its object was not expressed in the title, nor was the title inconsistent with the provisions of the act.

It was further held, that the act was not rendered invalid by the fact that the title failed to indicate any punishment for the violation of its provisions, which punishment was imposed by its second section. Citing Insurance Co. vs. Raymond, 70 Mich. 485.

Reported in 50 N. W. Rep. 296.

The People vs. Charles Fay. Error to Recorder's Court of Detroit. Perjury. Sentenced to Detroit House of Correction for three years. Affirmed.

The respondent was convicted in the Recorder's Court of the city of Detroit of the crime of perjury. The information charged the offense to have been committed in the case of People vs. Frank Connerton, who was charged with the crime of burglary. The respondent in this case appeared and testified in behalf of Connerton on his examination before Police Justice Haug. It became a material matter on that examination whether King, a witness in that case, was in the city of Detroit, the place where the burglary was committed, on the 28th and 29th days of March, 1890. The witness King was called by the prosecution to show that Connerton was in Detroit on these days, and that he (King) was present with him during the time the offense was committed. The respondent, Fay, was called by defendant, Connerton, to contradict the testimony of the witness King. Fay testified as follows: "I am positive King was not in Detroit February 28. That is the day Connerton is alleged to have stolen this property from Mr. O'Rourke's. I swear Mr. King was not here last Friday, or a week ago last Friday, or two weeks ago."

The information against Fay for perjury charged him with testifying falsely that he saw the witness at Toledo "March 28," and that he was not at Detroit on that date. *Held*, that, as Fay was called only to show that the witness was not at Detroit March 28, his evidence showed that he intended to so testify, and there was no variance between the proofs and the information.

Where accused, after a denial of his motion to have two persons confined in the penitentiary produced as witnesses, procures their depositions, which his counsel voluntarily reads at the trial, he cannot object to their introduction.

Reported in 50 N. W. Rep., 752.

The People of the State of Michigan vs. William J. Stevens. Error to Recorder's Court of Detroit. Murder. Sentenced to the State prison for life.

One William J. Stevens was upon the 9th day of January, 1886, convicted of murder in the first degree in the Recorder's Court of the city of Detroit, and sentenced by said court to be imprisoned in the State prison for life.

Upon the 6th day of January, 1891, nearly five years after judgment and final determination in said cause, the defendant sued out a writ of error. At the October term following the Attorney General filed a motion to dismiss said writ of error on the ground that it was not issued within the time provided by law.

Section 8686 of Howell's Statutes provides that all writs of error shall issue within two years after final judgment or rendition in any cause.

Section 8683 of Howell's Statutes provides that no writ of error upon judgment of conviction for treason or for murder in the first degree shall issue unless allowed by one of the Justices of the Supreme Court, after notice given to the Attorney General.

The principal question to be decided in this case was whether this last section controls the issuing of writs for murder in the first degree or simply controls the practice for the issuing of those writs; in other words,

had the respondent in this case the right, even by the order of one of the Supreme Court Judges, to a writ of error after the lapse of time provided for by section 8686 of Howell's Statutes? The respondent did not come within any of the exceptions specified in section 8687.

The court held that the statute limiting the time in which to sue out writs of error applied to criminal as well as civil cases, and, therefore, dismissed the writ.

No opinion was filed.

The People vs. James Brady. Error to Leelanau. Assumpsit by Alfred John, Prosecuting Attorney for Leelanau county, for and in behalf of the people of the State against James Brady. Judgment for plaintiff. Defendant appealed. Affirmed.

This action was brought in justice court against the defendant, who was a practicing physician, to recover the penalty provided by section 44 of Act No. 11, Public Acts 1883. The act provides that when any physician shall know that any person whom he is called to visit is infected with smallpox, cholera, diphtheria, scarlet fever, or any other disease dangerous to the public health, he shall immediately give notice thereof to the health officer, etc.

Howell's Statutes, section 8439, provides that every supervisor, when he knows that any penalty has been incurred within his township, which shall be recoverable in an action before a justice of the peace, shall prosecute a suit in the name of the people of this State for the recovery thereof.. Section 8441 provides that when the penalty cannot be recovered before a justice of the peace the supervisor must give notice to the Prosecuting Attorney of the county; and section 8442 provides that, "in the cases mentioned in the last preceding section, and in all other cases where the Prosecuting Attorney shall know that a penalty has been incurred in his county, it shall be the duty of such Prosecuting Attorney to prosecute for such penalty." *Held*, that an action for a penalty recoverable before a justice of the peace could be brought in the name of the Prosecuting Attorney, instead of in the name of the people of the State. People vs. Navarre, 22 Mich., 1, distinguished.

In this action for not reporting to a health officer cases of diphtheria, testimony of certain fathers to the sickness of their respective children, that a disease attacked the children's throats, that they themselves pronounced it diphtheria, and that defendant attended the children as a physician and pronounced it diphtheria, was held sufficient to show the existence of the disease.

Held further, that in such case, where the statute required the physician immediately to give to a health officer a written notice of the names and residences of the persons sick with the disease, and the evidence showed that, a week or ten days after defendant had pronounced the children sick with diphtheria, he stated to a health officer that they had diphtheria at certain places, naming them, it was not error for the court to charge that it was a question for the jury whether defendant failed to report the cases in a reasonable time after he discovered the existence of the disease, and that in cases like diphtheria, where the disease is virulent and rapid in its action, eight days is not a reasonable time.

Reported in 51 N. W. Rep., 537.

The People vs. John B. Hughes. Error to Superior Court of Grand Rapids. Keeping saloon open on Sunday. Affirmed.

Respondent occupied store buildings which were connected by archways. Each building was divided into two apartments, which were likewise connected with archways. In the front part of one building was the bar, and the room in the rear thereof contained tables and chairs, and liquors were served therein when the bar was open. In the front part of the other building was the office, and in the rear of the office was the billiard room. On the Sunday in question some fourteen persons were seen to enter the office and go through into the billiard room, and two witnesses testified that from the alley in the rear they heard voices, the clinking of glasses, and the noise of a cash register in operation coming from the apartment in the rear of the bar. The defense was that the bar was closed and separated from the other rooms by damask curtains and barricades; that no liquors were dispensed in the other rooms on that day; that respondent was a bachelor and spent his Sundays in his office, and received his friends there, and that the persons who came in on the day in question were simply playing cards. *Held,* that a saloon keeper who receives his friends on Sunday in his office, connected with his bar, in another building, by archways, but separated therefrom by damask curtains and barricades, is guilty of keeping his saloon open on Sunday.

Reported in 51 N. W. Rep., 518.

The People vs. Daniel Cummings. Error to Muskegon county. Larceny. Indeterminate sentence for a period of not less than two nor more than four years in the State House of Correction at Ionia. Reversed and prisoner held until expiration of minimum sentence.

Daniel Cummings was convicted of larceny, and sentenced to be "confined in the State House of Correction and Reformatory, at hard labor, for a period of not less than two, nor more than four years, in the discretion of the board of control of prisons of the State of Michigan."

Said sentence was had under Act No. 228, Public Acts Michigan, 1889, which provides that the court may, in its discretion, impose "a general sentence" of imprisonment upon any person thereafter convicted of a crime, and that the board of control of prisons may establish rules and regulations, under which a person so sentenced, who has served the minimum term provided for his crime, may be allowed to go on parole outside of the prison buildings and enclosures, but to remain, while on parole, "in the legal custody and under the control of the board" and subject at any time, upon being "declared a delinquent" for violation of his parole, "by a formal order entered in the board's proceedings," to "be treated as an escaped prisoner," and made, "when arrested," to serve out the unexpired period of the "maximum possible imprisonment," etc. Said act was held void on the ground that it clothes said board with authority tantamount to judicial and pardoning powers, which the constitution of Michigan, article 6, section 1, and article 5, section 11, vest exclusively in special courts and the Governor, respectively.

A sentence thereunder, for "not less than two, nor more than four years," in the discretion of said board, was held good for the minimum period.

Reported in 50 N. W. Rep., 310.

The People vs. Timothy Crowley. Error to Superior Court of Grand Rapids. Keeping saloon open on Sunday. Affirmed.

Defendant was in business at No. 142 Grandville avenue, in the city of Grand Rapids. His saloon, grocery store and dwelling were adjoining and connected. He was convicted of keeping his saloon open and not closed on Sunday the 14th day of December, 1890.

His bartender testified that some time after 7 o'clock in the evening he went in the saloon, and no one was there. That he got a cigar and a drink of beer and went away. *Held*, that a saloon keeper who allows his bartender to enter the saloon on Sunday and help himself to a glass of beer is guilty of the offense of keeping his saloon open on Sunday.

Reported in 51 N. W. Rep., 517.

In the matter of the petition of Howard Huntley for a writ of *habeas corpus*. Prisoner discharged.

One Howard Huntley, who was a minor under the age of 16 and over the age of 12 years, was convicted before a justice of the peace in the city of Cadillac, and was thereupon sentenced to the Reform School at Lansing until he reached the age of 17 years, unless sooner discharged by due process of law.

Petitioner, by his attorney, D. E. McIntyre, applied to the Supreme Court for a writ of *habeas corpus* to inquire into the cause of the imprisonment and detention of the said Howard Huntley, and that he might be relieved therefrom, said petition being based upon the ground that "no reviewal of the proceedings and testimony taken upon the trial of the said Howard Huntley, in said court, was had by either the Circuit Judge or the Probate Judge of Wexford county in pursuance of the statute."

The Probate Judge of Wexford county certified on the back of the commitment that he had carefully reviewed the proceedings and testimony taken on the trial of the said Huntley, and that he had approved the said commitment and sentence therein recited. He afterwards certified that "the only proceedings, paper, matter, testimony or thing submitted to me for approval of sentence imposed upon the said Howard Huntley by the said justice of the peace, was the commitment."

He also testified to this in open court, and upon such showing the petitioner was released from custody, the court holding that the reviewal of the proceedings and testimony taken must be had by either the Probate or Circuit Judge, and that upon the hearing of the *habeas corpus* proceedings the fact that no such reviewal was ever had might be shown.

No opinion was filed.

The People vs. Charles T. Wright. Error to Benzie county. Murder in the first degree. Sentenced to State prison at Jackson for life. Affirmed.

The respondent was convicted of murder in the first degree in the Benzie Circuit Court on April 30, 1890, and on the 1st day of May, 1890, was sentenced to State prison at Jackson for life. The information charged that the respondent killed one Frank E. Thurber, at Aral, in the township of Lake, Benzie county, August 10, 1889. The trial came on before a jury, lasting nearly three weeks, and was concluded on August 10. The information charged murder in the first degree. Before the impaneling of the

jury, and at the time the respondent was arraigned upon the information, and before pleading thereto, his counsel moved to quash the information, on the grounds that the respondent had had no preliminary examination before the magistrate, and that the return of the magistrate did not show that respondent had waived examination. The Prosecuting Attorney thereupon asked an order from the court directing the magistrate to make further return. A further return was made by the magistrate, who then certified that the respondent did waive examination upon the charge contained in the complaint and warrant, which had previously been returned to the Circuit Court. The Court thereupon overruled respondent's motion to quash the information.

Howell's Statutes, section 9555, provides that no information shall be filed for any offense until the accused shall have had a preliminary examination before an examining magistrate, unless such person shall waive such right. *Held*, competent for the court, where the return of the justice failed to show that defendant, charged of murder, had waived such examination, to order a further return; and, when the further return showed that examination was waived prior to filing the information, the court had jurisdiction to proceed on the information. Turner vs. People, 33 Mich., 363; People vs. Evans, 40 N. W. Rep., 473, 72 Mich., 387, distinguished.

The second ground of complaint related to the question of the qualifications of one Myron D. Clarey as a juror. It appeared that there was not a sufficient number of jurors drawn to fill the panel for the trial of the cause who were qualified to sit. The court entered an order directing the sheriff to summon 20 additional persons qualified to sit as jurors from among the neighboring citizens to complete the panel. Mr. Clarey was one of the persons so summoned. It was contended by counsel for respondent that Mr. Clarey, upon his examination as to his qualification to serve as a juror, disclosed the fact that his residence was in Van Buren county, and not in Benzie county. The examination of the juror is fully set out in the record. It appeared that he had long been a resident of the State, living for many years in Van Buren county. He had moved from Van Buren county to Nesson City, in the township of Colfax, Benzie county, some three and a half months prior to the time of being summoned as a juror. The week before being summoned he had moved up to Buckley & Douglas' railroad, out of Colfax township, and into another township in Benzie county.

Howell's Statutes, section 7580, provides that when there are not jurors enough present to form a panel the court may direct the sheriff to summon a sufficient number of jurors to complete the panel from among the bystanders or neighboring citizens. Section 7555 provides that jurors shall have the qualifications of electors. *Held*, that a resident of the State for many years, and a resident of the county for three and one-half months, though he had moved from one township to another in the county a few days prior to being summoned, was a qualified juror.

Another alleged error was based upon the action of the court in appointing E. S. Pratt and Thomas Smurthwaite as counsel to assist the Prosecuting Attorney in the trial without requiring them to be sworn as to their qualifications as such counsel. It appeared that the trial Court regarded the case as one of great public importance, and at the request of the Prosecuting Attorney appointed these attorneys to assist him. During the trial no objection was made by respondent's counsel, and nothing called to the attention of the Court by him or any other person which showed any disqualification in them to assist the prosecution.

Held, that attorneys at law, being officers of the court, are presumed to be qualified to act in behalf of the people in a criminal prosecution, and, in the absence of objection they need not be sworn as to their qualifications. People vs. Bussey, 46, N. W. Rep. 97, 82 Mich. 49, distinguished.

It was claimed that the Court was in error in permitting witnesses to state the character of the wounds on the body of Marshall.

Held, that in a prosecution for murder, testimony as to the character of the wounds on the body of deceased was competent to go to the jury.

Error was assigned upon the rulings of the Court in permitting counsel for the people to exhibit the clothing of Marshall and Thurber to the jury, and commenting upon them in their arguments.

Upon the trial it was shown, and not contradicted, but confessed, that these two men came to their death by the hand of the respondent.

Held, that where it was admitted that the fatal shots were fired by defendant, and self defense alleged, it was competent to exhibit to the jury the clothing worn by deceased, to show how near the parties were to each other at the time.

Where the Court gave full and proper instructions regarding the crime of murder in the first and second degrees, of manslaughter and justifiable homicide, under the evidence in the case, the Court did not err in refusing to charge the jury that "the greatest offense of which defendant could be convicted would be manslaughter."

Howell's Statutes section 9577, provides that any person who shall be convicted before any court of record may allege exceptions, which may be presented to the judge before the end of the term, and, if found correct, shall be allowed and signed by the judge, upon which all further proceedings shall be stayed unless it shall appear to the judge that such exceptions are intended only for delay, and in that case judgment may be entered and sentence awarded. *Held*, that entering on the day of the verdict a special motion in arrest and stay of judgment and sentence on the ground that, as appears by the records and files of the cause, the Court was without jurisdiction to try defendant, "which motion is based on the records and files in the case," may well have been considered taken for delay, and it was not error to pronounce sentence on the same day. Crowfoot v. People, 19 Mich., 254, followed.

Howell's Statutes section 9075, provides that on conviction of murder in the first degree the person "shall be punished by solitary confinement at hard labor in the State Prison for life." *Held*, that the use of the word "natural" before "life" in the sentence was surplusage, and did not effect the sentence.

Reported in 50, N. W. Rep., 792.

Sherwood Hall vs. Edwin A. Burlingame, Judge of the Superior Court of Grand Rapids.

Certiorari on petition of Sherwood Hall to Edwin A. Burlingame, Judge of Superior Court of Grand Rapids.

Public Acts 1881, No. 150, (How. St. section 978,) entitled "An act to provide for the enrollment of contributing members in each company and battery of State troops," provides for the enrollment of not more than a certain number of members in each company and battery, each member to pay into the treasury annually not less than $10, and declares that on such payment he shall receive from the commanding officer a certificate, and shall be exempt from jury duty and poll-tax. *Held*, that said act does not

contravene Art. 4, section 20 of the constitution, declaring that no law shall embrace more than one object, which shall be expressed in its title.

Nor is it void, as conferring on military officers the power of arbitrarily setting aside the authority of the courts to compel the attendance of qualified jurors, or because it transfers from the courts to military officers the power to determine exemptions from jury duty, since the member, when he has complied with the act, is made exempt by law, and not by an act of the military officers.

Nor does it amount to class legislation, since any citizen, no matter what his occupation, is entitled to the exemption, until the full number is enrolled in each company.

Nor is it against public policy, on the ground that no public reason exists therefor.

Reported in 50 N. W., Rep., 289.

In the matter of the petition of John Wilson for a writ of *habeas corpus*. Hearing had at Jackson before Judge Daboll. Order made discharging prisoner, but proceedings stayed until the Attorney General could bring the matter before the Supreme Court.

See Attorney General vs. Daboll, Circuit Judge, *infra*.

The People vs. Frank Umlauf. Exceptions from Macomb County Circuit Court. Giving false pedigree of an animal with intent to defraud. Reversed and new trial ordered.

Defendent sold a horse, and gave a false pedigree, stating that it was true. He testified that he could not read, and that he thought it was true, and there was no evidence to the contrary. The horse had been sired and foaled in the neighborhood, and many of the horses on the pedigree were neighborhood horses of local reputation. He had passed through several hands before reaching defendant, and no record had been kept of his lineage. Other persons made the pedigree out for defendent. *Held*, that defendant could not be convicted under Public Laws Mich., 1887, p. 8, section 1, making it unlawful for any person to "knowingly" give a false pedigree of any animal with intent to defraud.

Reported in 50 N. W., Rep., 251.

The People vs. Frank Treat. Error to Barry county. Violation of the liquor law. Fined $200. Affirmed on default. No opinion filed.

The People vs. John Slack. Error to Sanilac. Manslaughter. Affirmed.

Defendent was indicted for murder. He claimed that the killing was done while he was insane, and unconscious of the act, under intoxication fraudulently produced by a saloon keeper who gave defendant, when partially intoxicated, a mixture of a "liquid of a fiery nature" which produced a condition of "uncontrollable frenzy." Defendant's counsel offered to show certain experiments that he had caused to be made with whisky and "liquid" which he alleged to be of the same character as that which caused the mischief. Defendant testified that he had tasted of this "liquid" and found it similar to that which he drank at the time of the

shooting, and that he thought it was the same brand. The "liquid" experimented with was bought in the same store where the liquor given to defendant at the time of the shooting was bought, but it was not shown that it came from the same barrel. *Held*, that the testimony of defendant was properly excluded, as it did not tend to prove the identity of the liquor drank at the time of the shooting with that experimented with.

The evidence showed that after the shooting, defendant said, "stand back; don't come near me," and several hours later, when asked on the street what the matter was, he replied that "they undertook to press" him, and he had to defend himself. He was badly excited, but was rational. About three hours later, when the officer arrested him, defendant went towards the cupboard, and said he wanted the butcher-knife to defend himself with, as he was afraid of the mob.

Held, that the court properly refused to charge the jury that if they should find that at the time of the shooting defendant was delirious, and conceived a delusion that persons about him were seeking to injure him, and believed it necessary to use his revolver in defense from a supposed attack, and used it, impelled thereto by delusion, they should acquit.

Held further, that whether defendant knowingly drew his revolver and pointed it at the person killed to "scare" him, or whether he unknowingly did the shooting in a state of voluntary intoxication, he was guilty of manslaughter.

Reported in 51 N. W., Rep. 533.

In the matter of the petition of Hattie Lewis. *Habeas corpus*. Prisoner remanded.

The petitioner in this case was convicted of keeping a house of ill-fame, and, by virtue of such conviction, was confined in the Detroit House of Correction. She applied to the Supreme Court for a writ of *habeas corpus* and *certiorari* asking for her relief principally upon the ground that she was not present at the trial.

The return of the Circuit Judge showed that upon the trial she was taken sick and asked to be excused from the court room. She, with one of her counsel, then went into the Judge's room and closed the door, but before she left the room the Court ordered the proceedings to be suspended and a recess to be taken. Afterwards the petitioner requested that she be allowed to sit in the doorway of the Judges' room, some eighteen feet distant from the judge, the jury and the witnesses.

The Judge certified of his own personal knowledge that the proceedings in the court room could be seen and heard as well where the petitioner sat as if she sat with her counsel; and that if she was absent any time from the court room during the trial of her case it was surreptitiously and without his knowledge.

The case was argued on the 27th day of July, 1891, and on the same day the Court denied the writ, and ordered the prisoner remanded to the custody of the officer.

The People vs. Maurice Fitzgerald. Error to Recorder's Court of Detroit. Obtaining money under false pretenses. Reversed and prisoner discharged.

The respondent was convicted upon an information for obtaining money

under false pretenses, and sentenced to the State prison at Jackson for the term of five years. The objections made to the information were as follows:

First, It failed to allege that Joseph H. Berry had any connection with Berry Bros., as agent or otherwise, or that he was authorized by said Berry Bros. to give money in charity or for any other purpose. *Held*, that the allegation, in an information for obtaining money for a charity under false pretenses, that the person to whom the false representations were made was a member of the co-partnership of which the money was fraudulently obtained, is sufficient to show the agency and authority to give in charity.

Second, It failed to allege a *scienter*. *Held*, that an information for obtaining money under false pretenses must aver defendant's knowledge of the falsity of his representations.

Third, It failed to allege that the pretenses were false in fact. *Held*, that the allegation in such information, "Whereas, in truth and in fact * * * was not at any time, nor at any other time, authorized by * * * to collect any money, * * *"—sufficiently averred the falsity in fact of defendant's pretenses.

Reported in 52 N. W. Rep., 726.

The People vs. Stephen Potter. Exceptions from Midland county. Violation of liquor law. Reversed and new trial granted.

The respondent was tried and convicted upon the charge of violating what is now known as the "liquor law."

The only exception to the charge of the Court which the Supreme Court considered is the following: "Defendant, by his counsel, also then and there excepted to said charge, for the reason that said Circuit Judge failed therein to charge the jury that the respondent was presumed innocent until proven guilty."

Held, that it is the duty of the Court in a criminal prosecution to inform the jury that the law presumes every man innocent until proven guilty, and this duty obtains in cases of misdemeanor where intent is not an element of the crime, as well as in all other cases.

Citing, People vs. Macard, 73 Mich., 25.
People vs. Murray, 72 Mich., 10.
Reported in 50 N. W. Rep., 994.

The People vs. William Cahoon. Exceptions from Jackson. Assault with intent to do great bodily harm less than murder. Reversed and new trial granted.

In this case defendant's wife testified that she was present when the alleged crime was committed, and the Prosecuting Attorney thereupon asked her: "Is it not a fact that you were not there at all?" "Has this been written out?" "Is it not a fact that you and your husband have concocted the whole story?" "You have been a witness for your husband in every lawsuit he has had, have you not?" *Held*, that such questions were improper, as reflecting on the character of the witness.

The information contained two counts,—one setting forth an assault with intent to kill, and the other an assault to do great bodily harm,—and the testimony was conflicting. *Held*, that the jury was not compelled to

accept either count in all its details, and a verdict on the second count would not be set aside because one count showed an intent to kill.

People v. Partridge, 49 N. W. Rep. 149, distinguished.

Reported in 50 N. W. Rep., 384.

The People vs. James F. McGuire. Exceptions from Recorder's Court of Detroit. Breaking and entering office in night time. Reversed and new trial granted.

The respondent was convicted in the Recorder's Court of the city of Detroit of the crime of burglary. All the exceptions save one related to the conduct of the Prosecuting Attorney upon the trial.

In the course of his argument the Prosecuting Attorney said: "The defendant is entitled to the reasonableness of every doubt. I admit that; but, gentlemen of the jury, if I had any belief of any doubt that was reasonable in the face of this testimony, as your prosecutor, I would tell you so." The respondent's counsel requested the court to charge the jury that they must not consider the belief of the Prosecuting Attorney, or his impression of the testimony. The Circuit Judge did not give this instruction, and made no reference to the matter in his charge.

Held, that it was error to refuse to instruct the jury that "they must not consider the belief of the Prosecuting Attorney, or his impression of the testimony."

Held further, that neglect by the court in criminal cases to properly charge the jury on a material point may be taken advantage of on appeal without an exception thereto at the trial.

People vs. Murray, 40 N. W. Rep., 29, 72 Mich., 10.

People vs. Macard, 40 N. W. Rep., 789, 73 Mich., 15, followed.

Thorn vs Maurer, 48 N. W. Rep., 640, 85 Mich., 569, distinguished.

Reported in 50 N. W. Rep., 786.

The People vs. Patrick Raher Error to Gogebic county. Assault with intent to do great bodily harm less than the crime of murder. Affirmed.

The respondent was convicted of an assault with intent to do great bodily harm, less than murder, upon the person of one John Peterson. Other persons besides Peterson were standing near him when the respondent fired a revolver, wounding Peterson in the head. The court was requested to instruct the jury that they must find the specific intent to assault Peterson. This request was refused, and the court instructed them that, if he shot into the crowd with the intention to wound any of them, he might be convicted, notwithstanding he had no specific intent against Peterson. The Supreme Court sustained the instruction as correct.

The information contained two counts, one for assault with intent to murder and the other for assault with intent to do great bodily harm. The court instructed the jury that if they found neither of these intents they must acquit. It was alleged as error that the court should have instructed them that if there was no intent they might find him guilty of assault and battery. The respondent was defended by attorneys of skill and experience in criminal cases. They submitted to the Court nine requests to charge, but no request as to assault and battery. *Held*, that the objection came too late and must be overruled.

Reported in 52 N. W. Rep., 625.

The People vs. Michael Shaughnessy. Error to Recorder's Court of Detroit. Breaking and entering store in the night time. Affirmed.

Respondent was convicted of breaking and entering the store of one Joseph Wolf, not adjoining to nor occupied as a dwelling house. The information was filed under Howell's Statutes, section 9134. The form of the information was the same as in People v. Nolan, 22 Mich. 228. Wolf's store fronted on Michigan avenue in the City of Detroit. Was a one-story structure, divided near the back end by a permanent partition. In the partition was a door leading into the rear part of the building, fastened on the store side by a bolt, and on the opposite side by a lock and key. The rear part was occupied as a dwelling house by two women. This rear part was divided into a bedroom and general living room. In the partition, and leading into the bedroom, was a hole about three feet square, but which was covered by boards fastened over the hole, to the partition, by screws, and papered over. Wolf rented the whole building, and sub-rented the rear part to these women. They, on the night of the commission of the burglary, were absent from their apartments. The respondent and others effected an entrance into the part occupied by these women, tore off the board and paper over the hole, entered the store, turned the bolt, and tore off the lock. *Held*, that the question whether the store alleged to have been broken and entered adjoined a dwelling house, or was occupied as such, was a question of fact for the jury.

Reported in 50 N. W. Rep., 645.

The People vs. Albert C. Lange. Exceptions from Muskegon county. Embezzlement. Reversed and new trial granted.

The respondent was convicted of embezzlement under an information containing five counts, covering a period of six months each, while in the employ of one Lyman G. Mason, as his clerk and book-keeper.

Two jurors were challenged as incompetent because they were justices of the peace.

Held, that the exemption of a justice of the peace from acting as a juror is a personal privilege, and not the subject of challenge for cause. (See People vs. Rawn, *infra*).

At the trial a *subpœna duces tecum* for the production of the account books of Mason, the prosecuting witness, was served on Bigelow, a clerk of Mason, who had charge of the books. Bigelow refused, and at first was held in contempt, but afterwards testified that during a few moments absence from the room the books desired disappeared from their accustomed place in the vault.

In the mean time, Mason sent instructions to Bigelow not to produce the books. Later in the trial, Bigelow was called again, and testified that he had received a telegram fram Mason discharging him, and, on being questioned by the prosecution as to what search he had made for the books, he said he could not find them in the vault; but he had made no inquiry of anybody,—not even of Mason's attorney, who was there. *Held*, that the loss of the books was not sufficiently proved, and their disappearance occurred under such suspicious circumstances as to render parol evidence of their contents incompetent.

It was shown in the case that Bigelow prepared a paper "purporting to show the misappropriations of money," by defendant, and that Mason took it into an adjoining room, in which were defendant and his brothers,

but there was no evidence that the statement was either shown or read to defendant. Bigelow was asked: "As they finished the examination of that paper before they left the office, didn't you hear one of the brothers of defendant say, 'Well, we will have to fix that up?'" To which he answered, "I heard one of them make a remark." Such remark was not made in presence of defendant. Bigelow was then permitted to testify to the contents of the statement, which was among the papers which had disappeared. *Held*, that the question was objectionable, as it assumed a fact not proven, and that the testimony was incompetent.

Counsel for the people, in making the closing argument to the jury, said: "Cook [defendant's counsel] tells you about the injustice of having the case presented with only half the testimony, and he assumes that, if the books had been here, there would have been something else to do. Now, on the contrary, if we have introduced testimony here, to show that probably their client will be guilty, it lies with them to overcome it. What are they here for? For the purpose of stifling justice; for the purpose of leaving testimony out of the case," etc. *Held*, that such language was objectionable, as it was intemperate, and also as it was based on the theory that the prosecution had made out a case of probable guilt, and that the burden of proof was then shifted on defendant to overcome it.

Reported in 51 N. W. Rep., 534.

The People vs. Henry J. Scott. Exceptions from Schoolcraft county. Violation of liquor law, in selling without license. Affirmed.

The sole question raised in this case related to the sufficiency of the information, which was in the precise form of that held good in Luton vs. Circuit Judge, 69 Mich., 610, 37 N. W. Rep., 701. The court reaffirmed the holding in that case. The exceptions were overruled, and the cause remanded, with directions to the Circuit Court to proceed to judgment.

Reported in 51 N. W. Rep., 520.

In the matter of the petition of Claude Hoeg for a writ of *habeas corpus*.

This is a case involving the same state of facts and the same question of law as in the matter of Howard Huntley *ante*. The prisoner was discharged, the facts being conceded.

In the matter of the petition of E. A. Griffin for a writ of *habeas corpus*. Petition for release of prisoner confined in Eaton county jail. Proceedings withdrawn, as the prisoner's term expired on the return day of the writ.

The People vs. John Ellsworth, et al. Exceptions from Newaygo county, Assault with intent to do great bodily harm less than murder. Affirmed.

The respondents Ellsworth and Dixon were found guilty of an assault with intent to do great bodily harm less than the crime of murder, and the respondent Craig guilty of an assault and battery, on a joint trial upon an information charging that defendents made "an assault with intent to do great bodily harm, less than the crime of murder," upon Edward Patnode and Frank Jewell, and did "beat, bruise, and ill-treat" said Edward Pat-

node and Frank Jewell. *Held*, that the pleading was not bad for alleging the crime to have been committed against more than one person, under Howell's Statutes, section 9122*a*, providing a penalty for "any person who shall assault another with the intent to do great bodily harm, less than the crime of murder."

Held further, that such information including the lesser crime of simple assault and battery, and being against a number of defendants, it was within the province of the jury to convict some of the higher crime and others of the lesser.

Reported in 51 N. W. Rep., 531.

The People vs. Charles Rominski, et al. Error to Ingham. Keeping saloon open after hours. Affirmed on default. No opinion filed.

The People vs. Harry Marks. Exceptions from Iosco county. Burglary. Reversed and new trial ordered.

The respondent was convicted in the Iosco Circuit Court of breaking and entering the store of one Henry Hanson, at Baldwin, in said county, on December 24, 1890, in the night time of said day, with intent to commit the crime of larceny. It appeared upon the trial that Hanson's safe, kept in the store, was drilled and blown open, and about $500 in money taken. Of this money, about $100 was in silver and other coins, and the balance in paper money. The next morning after the burglary the respondent and James Mead and William Mead were arrested for the offense. Upon examination before the justice the two Meads were discharged, and, upon information given by May Mead, the wife of William Mead, and by Marietta Mead, the mother of William and James Mead, two other parties, Frank Westbrook and Robert Morrison, were arrested, charged with assisting the respondent in the commission of the offense. It was admitted in the briefs of both counsel that Morrison afterwards obtained bail and fled, and that Westbrook was thereafter tried and acquitted. Before the time of the burglary the respondent was boarding at the house of William Mead. James and William Mead were both married, and lived in the same house, occupying separate parts, their father and mother being a part of their family. The testimony upon the part of the prosecution which had any tendency to show the complicity of the respondent in the commission of the offense, came from the Mead family, some of its members testifying to a confession made to them by the respondent after the burglary had been committed. This testimony was contradicted by the respondent upon his examination before the jury. The theory of the defense was that the Meads, in order to avert suspicion from James and William Mead, and to save them from prosecution, fabricated the whole story in reference to respondent's pretended confession of the offense.

The information charged the respondent with having entered a store in the night time, with intent to commit larceny, and there was evidence that larceny was committed. *Held*, that there was no error in an instruction that "respondent in this case is charged with having broken into" a certain store "with the intent to commit a felony therein," and "is charged, further, with having committed larceny in said store after breaking and entering the same," as it could not be presumed that the jury were misled

thereby, and that, by finding respondent guilty as charged in the information, they intended to convict him of larceny.

Respondent introduced evidence as to his good character, and none having been offered in rebuttal, the jury were instructed that "while the people who charge a man with crime cannot establish his guilt by proving he is a man of bad character,—I say, while the law forbids the people to attack his character or bring it up in court to establish his guilt, yet it does permit him to prove his good character or standing in life in defense." *Held*, that respondent was prejudiced thereby, as it induced the jury to believe that the people were under disadvantage, and unable to rebut such evidence.

The people sought to show that certain discolored coin, found in the possession of the wife of the alleged accomplice, Westbrook, was taken from the safe. Westbrook was called as a witness, shown some money found in the safe after the buglary, and asked if it resembled that taken from his wife. He replied in the negative, and testified that he had given his wife the money several weeks before the burglary. *Held*, that his testimony not having been contradicted, it was error to instruct the jury that they might identify the money by comparing it with that known to have been taken from the safe.

There were circumstances to show that the witnesses for the people were guilty of the crime charged, and that they conspired to testify falsely against defendant for the purpose of shielding themselves. *Held*, that the court should have directed the attention of the jury thereto, and to the claim of the defendant arising therefrom.

Reported in 51 N. W. Rep. 640.

The People vs. John Ringstead. Exceptions from Muskegon. Keeping saloon open on Sunday. Affirmed.

The respondent kept an hotel in the city of Muskegon. Within his hotel building he had a saloon, connected with the hotel office by a door. The washroom also had a door opening into the saloon. Back of the saloon was a hallway, into which the office and the saloon opened by doors. A door led from the hallway out of the building in the rear; and in the hallway, a distance of ten or twelve feet from the saloon door, was a door leading into a little room, called the "Greenroom." The respondent was convicted of the offense of keeping his saloon open, and not closed, on Sunday, the 11th day of October, 1891.

It was assigned as error that the court refused to grant the request of respondent, before any testimony was taken, that the prosecuting attorney state the location, the particular place, the street and number, where the saloon charged to have been unlawfully opened was situated. The information charged that the saloon was situated in the city and county of Muskegon and State of Michigan. *Held*, that the prosecutor was not obliged, before testimany was taken, to state the particular location of the saloon. A charge in the information that it was within a certain city and county, within which the court had jurisdiction, was sufficient.

It was contended that this greenroom was no part of the saloon, and, as the saloon was not shown to have been open on that day, the respondent should have been acquitted. *Held*, that the keeping open of a room on Sunday which was an adjunct of a saloon, and in which liquors were served from the saloon on week days, was a violation of Public Acts 1887, p. 455.

requiring the closing of saloons, etc., on Sunday; and it was sufficient to show that there was a temporary bar, where liquors were furnished and drank by customers, and it was not necessary to prove that they were paid for or technically sold within the particular room.

It was complained that the Prosecuting Attorney read portions of the statute to the jury, particular stress being laid on the passage, "It shall not be necessary to prove that any liquor was sold." *Held*, that it was not improper, in a prosecution under the law prohibiting the opening of saloons, etc., on Sunday, for the Prosecuting Attorney to read portions of the statute, or lay stress upon particular passages thereof.

The Prosecuting Attorney in his argument to the jury appealed to them to apply their common sense to the evidence. *Held*, that such language was not an appeal to them to use their imagination, and go outside the legitimate proof to draw unwarrantable inferences.

Complaint was made of other remarks of the prosecuting attorney to the effect that it was well known that saloon men violate the law every Sunday. *Held*, that the judgment of conviction would not be reversed because of these improper remarks of the Prosecuting Attorney, as they could not in any sense have influenced the jury.

Reported in 51 N. W., Rep., 519.

The People vs. Truman N. Hubbard. Exceptions from Jackson. Seduction. Reversed and new trial ordered.

The respondent was convicted of seducing and debauching one Rena Wilber, an unmarried woman of the age of 17 years. The Court was requested to direct a verdict for the respondent, upon the ground that no offense had been proven. The seduction was alleged to have been accomplished under a promise of marriage.

The conviction depended almost entirely upon the prosecutrix's evidence, and she admitted having sworn falsely to certain statements in another part of her testimony. *Held*, that it was proper to instruct the jury to consider her contradictory statements, and her admission that she had sworn falsely. People v. Jenness, 5 Mich. 329. Approved.

Held further, that where a general change covers all the points of law applicable in a consecutive and orderly manner, it is not error to refuse special requests.

Certain errors were alleged upon the admission of evidence of previous familiarities, protestations of affection, and conversations about marriage. After the alleged seduction the prosecutrix remained in the place about a month, after which she returned to her home. The Court excluded conversations about marriage during that time, but permitted evidence that they were together often during that month.

Held, that in a prosecution for seduction of an unmarried woman under an alleged promise of marriage, by defendant, evidence is admissible of the relations openly entertained towards one another after the alleged seduction, and that they were kindly and intimate, but not of conversations about marriage.

Admissions of defendant, after his arrest for bastardy, tending to show the act of sexual intercourse, and to prove seduction. *Held*, admissible.

Reported in 52 N. W. Rep., 729.

The People vs. Albert Ten Elshof. Carnal knowledge of female child under the age of fourteen years. Affirmed.

The respondent was convicted of the offense of having carnal knowledge of a female child under the age of fourteen years. The prosecution called as a witness the girl alleged to have been outraged, who testified that the offense was committed in September, 1890, in the barn on her father's place, in the township of Byron, Kent county. The respondent was called as a witness in his own behalf, and testified to having committed the offense on a date shortly after, in the house and not in the barn. *Held*, that he was rightly convicted. People vs. Jenness, 5 Mich. 305, distinguished.

Reported in 52 N. W. Rep., 297.

The People vs. Charles Behee. Exceptions from the Recorder's Court of Detroit. Obtaining money under false pretenses. Reversed, and prisoner discharged.

The respondent was convicted in the Recorder's Court in the city of Detroit, September 8, 1891, of the offense of obtaining property by false pretenses. After the jury had been impaneled and a witness sworn for the people, respondent's counsel objected to any testimony being given, because there was no offense charged in the information. The information charged "that Charles Behee, late of said city of Detroit, heretofore, to-wit, on the 9th day of July, A. D. 1891, at the said city of Detroit, in the county aforesaid, with intent to cheat and defraud Edwin S. Barbour, and fraudulently to obtain five dollars in money, of the value of five dollars, did designedly and falsely represent and pretend to Edwin S. Barbour that he, the said Charles Behee, was collecting money for Mrs. Algoe, a poor woman whose son, Frank Algoe, was killed on the Transit Railway, in the city of Detroit, June 6, 1891, and was her only support; and believing the said false pretenses and representations, made as aforesaid, by the said Charles Behee, he, the said Edwin S. Barbour, was then and there deceived thereby, and was then and there induced, by means of the said false pretenses and representations made as aforesaid, to deliver, and did then and there deliver, five dollars in money, of the value of five dollars, of the property of the Detroit Stove Works, a corporation organized and existing under the laws of the state of Michigan, to him, the said Charles Behee, and the said Charles Behee did then and there designedly, by means of false pretenses and representations made as aforesaid, unlawfully and fraudulently obtain from the said Edwin S. Barbour five dollars in money, and of the value of five dollars, of the goods and property of the said Detroit Stove Works, with intent then and there to cheat and defraud the said Detroit Stove Works of the same; whereas, in truth and in fact, the said Charles Behee was not authorized to collect any money for the said Mrs. Algoe, and that there was no accident on the said Transit Railway in the city of Detroit on the 6th day of June, 1891, to the great damage and deception of the Detroit Stove Works, and to the evil example of all others in like cases offending, contrary to the form of the statute," etc.

Held, that the indictment was fatally defective in failing to allege that Barbour had any connection with the stove works, as agent or otherwise.

Held further, that the information was also defective, in that it failed

to allege that defendant knew that the representations so made by him were false.

Held further, that as there was no direct allegation that defendant's representations were false in fact, and it being merely alleged that he was not authorized to collect any money for the woman in question, and that no such accident as that described by him had occurred, it was insufficient as a denial of defendant's representations.

Reported in 51 N. W. Rep., 515.

In the matter of Sarah Jones Jordan. Petition for a writ of *habeas corpus* to discharge petitioner from Industrial Home. Petitioner discharged.

This was a *habeas corpus* proceeding brought by Sarah Jones Jordan against the Superintendent of the Industrial Home to obtain her discharge from the custody of such Superintendent.

The commitment was attacked on the ground that it charged no offense known to the law.

The commitment recited that on the 22d day of January, 1887, said Sarah Jones Jordan was a disorderly person, within the meaning of section one of chapter 53, of the compiled laws of the State of Michigan, for that the said Sarah Jones Jordan "has no visible calling or business to maintain herself" and on said 22d day of Jaunary, 1887, did sleep in complainant's barn * * * and during the eight days preceding the said 22d day of January, 1887, did go about from place to place in said township without any visible means of support.

Compiled Laws, chapter 53, section 1, referred to in the commitment, provided that vagrants, "and all persons who have no visible calling or business to maintain themselves by," should be deemed disorderly persons. Act 1883, p. 141, in amending that section, omitted the clause in relation to persons having no visible calling. *Held*, that the intention was to exclude from the definition of "disorderly persons" those not having a visible calling or business.

Held further, that where "vagrancy" was not defined by the statute, it must be considered as such vagabondage as fairly comes within the common law meaning of the word.

Held further, that where the common law definition of a "vagrant" is "a person who refuses to work, and goes about begging," a charge that petitioner, on January 22, slept in complainant's barn, and during the preceding eight days went about from place to place in the township without any visible means of support, did not state an offense.

Reported in 50 N. W. Rep., 1087.

The People vs. Charles Rawn. Exceptions from Dickinson county.

Information against Charles Rawn for assault with malicious intent to disfigure. Verdict of guilty of simple assault. Conviction affirmed.

In this cause the sole question presented was whether one summoned as a juror, but exempt from service because over sixty years of age, is, by reason of such exemption, subject to challenge for cause. Howell's Statutes, Section 7571, exempts persons over sixty years of age from jury service, and the next section, section 7572, provides that the court to which any person shall be returned as a juror shall excuse such juror from

service whenever it shall appear (1) that he is exempt from serving on juries by the provision of the preceding section; or (2) that he is a practicing physician or surgeon, and has patients requiring his attention; or (3) that he is a justice of the peace, or executes any other civil office, the duties of which are, at the time, inconsistent with his attendance as a juror; or (4) that he is a teacher of any school, actually employed and serving as such; or (5) when, for any other reason, the interests of the public, or of the individual juror, will be materially injured by such attendance, or his own health, or that of any member of his family, requires his absence from such court. *Held*, that said sections do not disqualify a person over sixty years of age, so returned, the exemption being a personal privilege. Overruling People vs. Baumann, 52 Mich., 584.

Reported in 51 N. W. Rep., 522.

The People vs. Fred Martin. Error to Genesee. Larceny. Reversed and new trial ordered.

The respondent was convicted of the larceny of a horse in the Genesee Circuit Court on a trial before a jury, and sentenced to imprisonment in the State House of Correction and Reformatory at Ionia for the period of two years.

The information charged that defendant, at a given time and place, "one * * * mare, * * * of the value of * * * fifty dollars, of the goods, chattels, and personal property of * * * feloniously did steal, take, and carry away." At the trial the evidence of value was conflicting, ranging from eighteen dollars to sixty dollars. *Held*, there being no reference in such information to the statute (Howell's Statutes, section 9180) providing a special statutory penalty for "every person who shall steal any horse, mare, or filly, * * * of any value," that the question of the value of the mare was material and for the jury; the information having been framed under the general statute for larcency, providing that, where the value of the property stolen is less than twenty-five dollars, punishment cannot exceed three months' imprisonment.

Reported in 52 N. W. Rep., 68.

The People vs. Reuben Miller. Assault with intent to do great bodily harm less than the crime of murder. Affirmed.

The respondent was convicted of assault with intent to do great bodily harm, less than the crime of murder, and sentenced to the State prison at Jackson for one year.

It was claimed by respondent's counsel that the testimony showed that there was no intent to do any great bodily harm in this assault; that the two men had always been friendly, no previous malice existing in respondent's mind towards Dickinson, and there were no threats preceding the attack, and no motive shown why respondent should have contemplated doing Dickinson any serious or permanent injury. It was contended that the blow and the kick were one act, and done without premeditation, in a moment of impulse and excitement. The court was requested to charge the jury that respondent could not be convicted of any higher crime than assault and battery.

It was shown that defendant knocked down the prosecuting witness, and as he was falling kicked him, saying, "I will kick your ——— liver out."

Held, that the fact that the blow reached a vital spot, and the result, as showing the force employed, could be used to infer intent; but that the result of such kick should not be considered by the jury as evidence of the intent with which the kick was given, unless they found beyond a reasonable doubt that such result was contemplated by defendant.

Held further, that the fact that defendant struck the prosecuting witness with his open hand, and not with his fist, was immaterial, as regarded the intent, the injury threatened being a kick.

Held further, that to commit the offense of assault to do great bodily harm, one need not have contemplated with precision or intended to do only the very thing which followed the assault, but it is sufficient if serious and permanent bodily injury of any kind was intended.

Reported in 52 N. W., Rep., 65.

In the matter of the petition of Frank Treat for a writ of *habeas corpus*.

The petitioner in this case was convicted of violating the liquor law. He came to the Supreme Court on writ of error, and during the pendency of the case in the Supreme Court, he was discharged from custody by the Circuit Judge of Kent county, although upon what grounds this was done does not appear in the petition.

The sentence imposed by the Circuit Judge upon his conviction was that "said respondent do pay unto the State of Michigan a fine of two hundred dollars, and said respondent be committed to the county jail until the same be paid or until he shall be discharged by due course of law."

This sentence was attacked for uncertainty, when the case was before the Supreme Court on writ of error, but the case being noticed for hearing, and defendant not appearing or filing any brief or record, it was affirmed on default, and the Court directed to proceed to enforce its judgment.

Previous to the discharge of the respondent by Judge Adsit, of the Kent Circuit, he had served twenty-seven days of his sentence. When he was remanded by the Supreme Court on hearing of the writ of error, the Circuit Judge ordered him "to remain and be confined until said fine of two hundred dollars by said judgment imposed upon him shall be paid, not exceeding the period of five months, the unexpired portion of the period for which he was committed."

It was held by the Court that this was not a new sentence, but was simply an order of the Judge carrying out the old sentence, and that a deduction for the time he had been imprisoned was properly made.

Second, That the first sentence had been affirmed by the Court and was, therefore, *res adjudicata*, although it was expressly said by the Chief Justice that the validity of such a sentence was not passed upon, but for the purposes of this case it must be considered valid. No opinion was filed.

The People vs. Christopher O'Brien. Error to Recorder's Court of Detroit. Murder. Reversed and new trial granted.

Respondent was convicted of murder in the second degree. There were many assignments of error which related to the omission or exclusion of

testimony to which no objection was made or exception taken. Counsel assigned these errors for the purpose of showing that the respondent had not had a fair and impartial trial. The Court refused to consider such errors, but reversed the case for the following reason: On the trial it appeared that deceased died of a wound on the head, inflicted by some sharp instrument while he was fighting with defendant. *Held*, that a statement made by deceased to a doctor to whose house he had gone to have the wound dressed, neither of them thinking the wound serious, that defendant made the wound with a knife, was not competent, as part of the *res gestæ*.

Reported in 52 N. W. Rep., 84.

The People vs. Cornelius Graney. Error to Recorder's Court of Detroit. Buggery. Affirmed.

The respondent was convicted of a crime against nature, under section 9292 of Howell's Statutes, and sentenced to State's prison at Jackson for the term of ten years. It was objected that the information filed in the Recorder's Court of the city of Detroit, in which court respondent was tried, was not verified by the oath of the Prosecuting Attorney or any other person. The information was signed and filed by the Prosecuting Attorney.

Held, that under the charter and laws of the city of Detroit, 1883, p. 125, such information need not be verified by oath.

It was also contended that the Court erred in failing to instruct the jury that the defendant was presumed to be innocent until proven guilty.

The Judge charged the jury, that it was not for defendant to prove his innocence; that the prosecution must satisfy the jury beyond a reasonable doubt of defendant's guilt; and that defendant must be acquitted unless his guilt was strictly and impartially proven. *Held*, that the jury was sufficiently informed that the presumption of innocence was with defendant until he was proven guilty beyond a reasonable doubt. People vs. Murray, 40 N. W. Rep. 29, 72 Mich. 10; People vs. Macard, 40 N. W. Rep. 784, 73 Mich. 25; People vs. Potter, 50 N. W. Rep. 994, —distinguished.

Questions not raised at the trial of a criminal case cannot be considered on appeal.

Reported in the 52 N. W. Rep., 66.

The People vs. William Smith. Error to Recorder's Court of Detroit. Breaking and entering store. Affirmed. Respondent was convicted of burglary.

He was informed against in the same information with Michael O'Shoughnessy and Edward Bailey; was tried in the Wayne circuit court, convicted and sentenced to the Detroit House of Correction for five years. For full statement of facts, see People vs. Shoughnessy, 50 N. W. Rep., 645.

Howell's Statutes, section 9134 inflicts a certain penalty on "every person who shall break and enter, in the night time, any office, shop, store," not adjoining a dwelling house, etc. *Held*, that the question whether the store alleged to have been broken in and entered adjoined a dwelling house, or was occupied as such, was a question of fact for the jury.

Reported in the 52 N. W. Rep., 67.

The People vs. Aaron W. Hamaker. Exceptions from Jackson county. Aiding convict to escape from State prison. Reversed and prisoner discharged.

Respondent was convicted of aiding the escape of one John Donavan from the State prison at Jackson.

The information was filed under Howell's Statutes, Sec. 9245, denouncing the conveyance into any jail or prison of any disguise or instrument useful to aid any prisoner in making his escape, with intent to facilitate the escape of any prisoner "therein lawfully detained," which alleged that the person whose escape it was intended to facilitate had been convicted of the crime of "entering a saloon in the night time with intent to commit robbery." *Held*, that it was insufficient to show the legality of the alleged detention, as there was no such crime at common law as that alleged, and to have charged the crime denounced by section 9134 it should have followed the language of the statute by averring that the "saloon" was broken into, as well as entered, and that it was "not adjoining to or occupied with a dwelling house;" nor was it sufficient, under section 9135, making it a crime "to enter in the night time, without breaking," certain named buildings, as a "saloon" is not one of those enumerated.

Reported in 52 N. W. Rep., 82.

The People vs. Anna J. Wright. Exceptions from Chippewa county. Keeping house of ill-fame. Affirmed.

The respondent was convicted of keeping a house of ill-fame.

It appeared that two men—one of whom was an officer—visited the house in question, and the officer was called to show the conduct of the inmates, and testified to conduct on the part of his companion and one of the inmates, which tended to show acts of prostitution. The respondent requested the trial court to compel the Prosecuting Attorney to call this man as a witness, but the trial judge refused the request.

Held, that such acts being not the offense charged, but only circumstances to prove it, the Court properly refused to compel the prosecution to produce such companion as a witness.

It was claimed that the Court erred in instructing the jury that, if the respondent aided and abetted, countenanced and advised, others in the management and control of the house, and took part in keeping it as a house of ill fame, she would be guilty; and it was urged that, to justify a conviction of aiding and abetting, the respondent must be charged as an aider and abetter. *Held*, that the charge of keeping a house of ill-fame may be supported by proof that defendant aided or assisted others in the commission of the offense.

It was in proof that the officer above referred to had been furnished money by the county to be used in an effort to ascertain the character of the house. It was claimed that he made use of the man who accompanied him on the occasion above referred to to entrap the respondent, and that no prosecution should be sustained under such circumstances.

Held, there being other circumstances in evidence, entirely disconnected from the officer, tending to establish defendant's guilt, that a conviction would not be reversed because of the means employed against defendant.

Reported in 51 N. W., Rep., 517.

In the matter of Frederick Barr. *Habeas corpus*. Denied, and prisoner remanded to the custody of the warden of the Jackson Prison.

The prisoner in this cause was convicted of burglary and sentenced to the State Prison for the period of ten years.

The entry of the judgment of the Court reads as follows:

"In this cause the defendant, Frederick Barr, having been by the verdict of the jury duly convicted of the crime of burglary (being the feloniously breaking and entering of a store in the night time, with intent to commit larceny), as appears by the record thereof, and having been, on motion of the Prosecuting Attorney of the county, duly arraigned in open court at the bar thereof, and having been there asked if he had anything to say why judgment should not be pronounced against him, and having said what he had to say: Therefore, it is ordered, etc."

It was contended on the part of the petitioner that the clause "feloniously breaking and entering of a store in the night time with intent to commit larceny," stated no offense known to the laws of this State, and therefore the sentence of the Court was null and void and the prisoner imprisoned without legal process.

The return of the warden was accompanied by a duly certified copy of the information, plea and verdict. It was claimed on the part of the people that although the entry of the judgment was informal, inasmuch as it made reference to the entire record, it ought to be read as though the information, plea and verdict were incorporated within the record of sentence, and that mere technical irregularities could not be considered.

In support of this was cited the cases of

Cole vs. People, 37 Mich., 545.

In re Parks, 81 Mich., 240-243,

The Court sustained the position taken by the people.

No written opinion was filed.

Criminal cases pending in the Supreme Court:

The People vs. Albert E. Mason.
The People vs. Isaac Clawson.
The People vs. Severne Knudson.
The People vs. William Hodgkin.
The People vs. James P. Roe *et al.*
The People vs. Carl J. Quanstrom.
The People vs. John B. Hughes.
The People vs. Joseph Sweeney.
The People vs. Ephraim G. Kenyon.
The People vs. Henry Beach.
The People vs. James H. Harris.
The People vs. Frank A. Weithoff.
The People vs. William Edwards.
The People vs. Lorenzo Foote.
The People vs. John Handley.
The People vs. Mathew Murphy.
The People vs. Robert Smith.
The People vs. Charles E. Taylor.
The People vs. Ephraim Harris
In the matter of Bertha Gates.
The People vs. William H. Wade
The People vs. John Kahler.
The People vs. Ralph Williams *et al.*
The People vs. Thilo Kuehn.

SCHEDULE B.

This schedule contains a list of *mandamus* cases, *quo warranto*, and other proceedings commenced by the Attorney General in behalf of the State, or commenced by other parties, in which the State is directly interested.

Isaac F. Lamoreaux vs. The Attorney General. *Mandamus* to compel filing information. Writ denied.

This was an application for the issue of the writ of *mandamus* against the Attorney General, commanding him to sign and file in the Supreme Court an information in the nature of a *quo warranto* against John McQueen to determine the right of the said John McQueen to the office of sheriff of the county of Kent. It was alleged and appeared as a fact that the Prosecuting Attorney of that county, as well as the Attorney General, had refused, and still refused, to sign or file such an information which had been duly presented to each of them. Lamoreaux, the relator, was a candidate for sheriff on the republican ticket at the general election in 1890, and received 10,361 votes. McQueen was the democratic candidate for the same office at the same time, and received 11,438 votes. He was declared elected, having the highest number of votes, and qualified and entered upon the duties of the office, and had ever since been, and was at the time of this application, acting as sheriff. Lamoreaux was under sheriff on the 31st day of December, 1890 by virtue of his appointment to that position by Loomis K. Bishop, who had been sheriff of the county for two terms immediately preceding the beginning of the term to which McQueen was elected.

Held, 1. That Howell's Statutes, section 582, providing that in case of a vacancy in the office of sheriff in any county the under sheriff shall execute the office of sheriff until a sheriff be elected and qualified, does not apply where the full term is to be supplied, because the person elected to fill such term is ineligible, since there would be no under sheriff in such case, the term of the under sheriff appointed by the former sheriff expiring at the same time as his chief's.

2. A candidate who received the next highest number of votes for the office of sheriff cannot, on his own behalf, file an information in the nature of a *quo warranto* to try the successful candidate's title to the office.

3. Where the Prosecuting Attorney of the county declines to act, an elector and taxpayer may apply to the Attorney General, and, on his refusal, may institute proceedings in the Supreme Court to compel him to file an information in the nature of a *quo warranto* to determine the right of a person to the office of sheriff.

4. Where *mandamus* proceedings are instituted to compel the Attorney General to file an information to determine the eligibilty of a sheriff to hold office, on the ground that he is not a citizen of the United States, and

the evidence shows that the said sheriff has voted and held office in the State for more than twenty-five years, and has always considered himself to be a citizen, and, taken as a whole, does not afford any reasonable ground for the belief that the ineligibility of the person holding the office would be established, a writ of *mandamus* will be denied.

Reported in 50 N. W. Rep., 812.

Thomas E. Mays vs. George T. Shaffer, Commissioner of the State land office.

Application by Thomas E. Mays for a writ of *mandamus* to compel the Commissioner of the State Land Office to issue him certificates for certain swamp lands under a contract for constructing a State road. Writ denied.

The petition alleged that the legislature passed an act in 1889 authorizing the board of control of State swamp lands to appropriate swamp lands to aid in the construction of a State road from Bessemer to Black river, and that John H. D. Stevens was appointed commissioner to superintend the construction of said road; that he advertised for bids, and that petitioner was the successful bidder; that previous to making such bid, he wrote to the Commissioner of the State Land Office, inquiring what lands were subject to selection, and that said commissioner notified him that all the State lands on Bois Blanc island were open to selection; that he relied upon such representations made by the commissioner; that said contract for the construction of said road was entirely performed, and the work accepted; that he filed with the Commissioner of the State Land Office a list of the lands selected by him for the construction of said road under said contract, including the lands upon Bois Blanc island, and the commissioner refused to issue the patents.

Held, that there being sufficient swamp land in the upper peninsula, relator could not select swamp land on Bois Blanc island, situated in Lake Huron, between the upper and lower peninsulas, since such swamp lands are not in the upper peninsula, within the meaning of the contract.

Reported in 50 N. W. Rep., 993.

A. Ford Hursley vs. The Auditor General. Application for *mandamus* to compel the Auditor General to audit a bill for services for transferring prisoners. Granted.

This was an application for an order commanding respondent to audit and pay the bill of petitioner, who is sheriff of Chippewa county, for conveying a prisoner to the Detroit House of Correction. The prisoner was convicted under section 9286, as amended by act No. 34 of the Public Acts of 1887, and was sentenced under section 9864, Howell's Statutes.

Said section 9864, provides that females convicted of any State prison offense, except murder, shall be sentenced to the Detroit House of Correction. No provision is made for maintenance or expense of transportation from the county in which the conviction was had.

Sections 9850, 9852, provide that counties may contract with the Detroit House of Correction for the confinement of persons "not punishable by confinement in the State prison; and the fees of the sheriff for conveying the prisoners to such House of Correction shall be paid by the county." Sections 9853 and 9854 provide that the State prison inspectors may contract with the Detroit House of Correction for the confinement therein of

persons convicted of State prison offenses, and every female so convicted shall be sentenced to said House of Correction, and the sheriff of the county where conviction was had shall remove such person to the House of Correction, and shall be paid the same fees and compensation allowed for conveying persons to the State Prison. Section 9726 provides the fees and expenses allowed to the sheriff for conveying prisoners to the State Prison, and directs that they shall be audited by the Auditor General, and paid from the State treasury. *Held*, that the sheriff's fees and expenses for removing persons sentenced under section 9864 to the Detroit House of Correction must be paid by the State.

Reported in 51 N. W. Rep., 530.

Donald McRae vs. Commissioner of the State Land Office.

Application for *mandamus* to compel issuing of certificates of certain State swamp lands on Bois Blanc island. Denied.

Relator filed his petition for a *mandamus* to compel the Commissioner of the State Land Office to issue certificates to him of certain State swamp lands upon Bois Blanc island. He based his right upon the statement that such lands were, on the 1st day of October, 1889, duly advertised to be sold at public sale by the Commissioner of the State Land Office, under section 5444 *et seq.* of Howell's Annotated Statutes. That they were offered pursuant to such notice on the 14th of November, 1889, but were not sold, and that they stood under the graduated act of 1869, in January, 1891, at the price of four dollars per acre. That at this time he selected 11,000 acres of such land, and tendered the Commissioner four dollars per acre, and demanded certificates, and they were refused. That the reasons given for such refusal were: *First*, that on October 30, 1889, the Board of Control had adopted a resolution "that all the vacant swamp lands in the upper peninsula of this State be, and the same are, withheld from cash or homestead entry until the further order of this board;" *Second*, that the lands had been specially appropriated by Act 277 of the Public Acts of 1887. In response to the order to show cause, the Commissioner of the State Land Office answered, setting up several reasons why he should not be compelled to issue said certificates, and, among others, that by act 277 of the Public Acts of 1887 the swamp lands belonging to the State in Bois Blanc island were appropriated for the purpose of constructing a State road on or near the principal or base line of said island.

Act of Congress of September 28, 1850, granted certain swamp lands to the State of Michigan, and required that the lands or the proceeds thereof should be applied, so far as necessary, to reclaim them.

Held, 1st, that the appropriation of a part of the swamp lands for the construction of a State road, as provided by said act No. 277, was not "appropriating the public money or property for local or private purposes," within article 4, section 45, of the constitution, requiring the assent of two-thirds of the members elected to each house of the Legislature to such bills.

2d, that the Legislature has plenary power over the disposition of the swamp lands granted to the State by act of Congress, September 28, 1850, and Congress alone can question its acts.

3d, that though the graduated act of 1869 fixes the minimum price of certain swamp lands at four dollars per acre, *mandamus* would not lie to compel the Land Commissioner to issue certificates thereto to one offering to purchase at four dollars per acre when the lands were worth eight dollars

per acre, since the fixing of a minimum price implied that a greater one might be demanded.

Reported in 50 N. W. Rep., 1091.

Iron Range & Huron Bay Railroad Co. vs. The Secretary of State. *Mandamus* to compel filing of amended articles of association. Writ granted.

This was a petition for *mandamus* to compel the filing of amended articles of association of the Iron Range & Huron Bay Railroad Company. Said company was organized under the general railroad laws of the State of Michigan. Its articles of association were filed in the office of the Secretary of State on June 30, 1890. On the 2d day of September, 1891, articles amendatory of the original articles of association, increasing the capital stock from $500,000 to $1,000,000, were sent to the Secretary of State for filing and record, together with the regular fee of one dollar for the filing and recording. The Secretary of State refused to file such amended articles on the ground that the provisions of act No. 182 of the Public Acts of 1891 required that a franchise fee should be paid by all corporations who increased their capital stock subsequent to the passage of said act, whether organized before or after said law went into effect.

Section 1 reads that, "Every corporation or association hereafter incorporated by or under any general or special law of this State, shall pay to the Secretary of State a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof."

The writ was granted on the ground that the law only applied to corporations or associations incorporated after the passage of the act.

No opinion was filed.

Harry Hull vs. C. J. Reilly, Circuit Judge. Application for *mandamus* to Wayne Circuit Judge Writ denied.

Petitioner was convicted of murder in the Wayne Circuit Court, which conviction was reversed by the Supreme Court, and a new trial ordered, and the prisoner admitted to bail. The second trial was in progress, and the Circuit Judge ordered him into the custody of the sheriff of Wayne county. He applied to the judge to admit him to bail, and he declined. The Supreme Court was asked to compel the Circuit Judge by *mandamus* to admit relator to bail pending trial. The Court declined to do so and the writ was denied.

No opinion was filed.

Auditor General vs. Board of Supervisors of Menominee County. Application for a writ of *mandamus* to compel the Board of Supervisors to levy State tax. Denied and Auditor General directed to re-apportion State tax.

This was an application for *mandamus* to compel the Board of Supervisors of the county of Menominee to levy the State tax apportioned to said county for the year 1891.

The law provides that on or before the first day of September in each year, the Auditor General shall apportion the State tax among the several

counties in proportion to the valuation of the taxable property therein, as determined by the last preceding State Board of Equalization, which tax, together with other taxes is to be apportioned by the Board of Supervisors, among the several townships and levied and collected according to law. (Laws of 1889, pages 238-240.)

At the last session of the Legislature an act was passed entitled "An act to organize the county of Dickinson." (Act No. 89 of the Public Acts of 1891.) This act was approved May 21, 1891, but was not given immediate effect, and became a law, October 2, 1891. Dickinson county was formed from portions of Iron, Marquette and Menominee counties. Inasmuch as the act had not taken effect, on the first day of September, 1891, and did not make any provision for the emergency, the Auditor General apportioned the State taxes to Iron, Marquette and Menominee counties, without reference to the formation of Dickinson county. He then applied for a writ of *mandamus* to compel the Board of Supervisors of Menominee county to levy the tax. *Held*, that the writ should be denied; that the Auditor General should separate the equalized valuation, and apportion the taxes to Menominee county in proportion to the valuation of the property therein, after deducting therefrom the valuation of the property in the townships, or parts of townships, taken from Menominee county to form the new county.

The answer attacked the validity of the act on the ground that when the bill was passed by the Senate, Charles A. Fridlender, who occupied a seat in the Senate, and whose vote was counted for the bill, and was necessary to make up the majority requisite for its passage, was not a Senator.

The journal of the Senate showed that on February 24th the Senate convened and transacted business, and that a quorum was present; that a report of the committee on elections, unseating one Morse and seating one Fridlender, was adopted by a majority vote, on a call of the yeas and nays, and that a quorum was also then present. It then showed that on motion resolutions were adopted unseating Morse and seating Fridlender in his place; that a roll call was not had upon the motions, the record being merely that the resolutions were adopted. The journal of the 25th showed that on the opening of the session Fridlender was sworn in as a Senator; that a protest was filed, but was, on motion, laid on the table, upon a call of the roll, sixteen of the thirty-two Senators voting against and sixteen for the motion, the President giving the casting vote. The protest, which was entered on the journal, was signed by seventeen Senators, including Morse and another Senator, who had been unseated, and recited as its grounds that at the time the resolutions were acted upon there was not a quorum present. Attached to the protest was the affidavit of sixteen of the Senators, including Morse, that at the time the resolutions were adopted they were not present in the Senate chamber, and did not in any way participate in making a quorum; that at said time there was not a quorum present, and no business could have been transacted and that the journal was false. There was also attached to the protest the affidavit of another Senator, setting forth that he was present during the session of the Senate on the 24th; that at the time the resolutions were passed there were only fifteen of the thirty-two Senators present, including himself, whereas it required seventeen to constitute a quorum; that when the resolutions were pending he called the President's attention to the fact that there was no quorum; that before they were put to the vote he demanded the

yeas and nays to be taken, and recorded in the journal, which, if done, would have shown that there was no quorum, but that the President refused to grant the request; and that the journal was false. After the protest was laid on the table no further action was taken by the protesting Senators, or by the Senate as a body, and Fridlender, for the remaining five months of the session, acted as a Senator without opposition. *Held*, that as the rules of the Senate prohibited any member from absenting himself from the Senate without leave first obtained, and as the record showed that some time before the resolutions were adopted a quorum was present, and did not show that any Senators obtained leave of absence, the presumption that the quorum continued was conclusive. Per McGrath, J. Long and Grant, JJ., dissenting, on the ground that the journal of the 25th, on which were spread the protest and affidavits, rebutted the presumption, and showed that a quorum was not present.

The constitution provides that the yeas and nays of the members of either house, on any question, shall be entered on the journal at the request of one-fifth of the members elected; that, in case a bill or concurrent resolution is passed over the Governor's veto, the vote shall be had by yeas and nays, and the names of the members voting shall be entered on the journal; that no bill or joint resolution shall become a law without the concurrence of a majority of all the members elected to each house, and that on the final pessage of all bills the vote shall be by yeas and nays, and entered on the journal; that all votes on nominations to the Senate shall be taken by yeas and nays, and published with the journal of the proceedings. *Held*, that as there were no other provisions respecting the call of the roll or recording of the vote,—the vote on the motion to adopt the resolutions unseating Morse, and seating Fridlender, could be taken *viva voce*, and was not required to be entered on the journal, in the absence of a request of one-fifth of the members elected. Per McGrath, J.

The constitution gives each branch of the Legislature the exclusive right to judge of the qualifications, elections and returns of its members. *Held*, that as the Legislature may invoke the power, and exercise the right, notwithstanding there is no contesting claim before it, the Senate could as a body, at any time after Fridlender was seated, have taken action to remove him, if he was illegally seated, and the protesting Senators might have started such action; and as they failed to do so after the protest was filed, and acquiesced in his acting with them as a Senator, it must be deemed that the Senate ratified his right to the seat, and such ratification was of like effect as if it had affirmatively seated him. Per McGrath, J. Long and Grant, J. J., dissenting, on the ground that the protest and affidavits showed the dissent of the majority of the Senate to the seating of Fridlender, and their subsequently sitting with him did not show acquiescence in his acting as Senator, because his being seated put them in the minority, and any action on their part towards unseating him would have been useless.

Held, further, that even if the resolutions were unlawfully passed, and did not constitute Fridlender a Senator, the acquiescence of the Senate in his acting as such gave him color of title to the office, and made him at least a Senator *de facto*. Per Champlin, C. J., and McGrath and Morse, J. J. Long and Grant, J. J., dissenting, on the ground that there was no such acquiescence; that Morse, the Senator *de jure*, was never legally

removed, and continued to be the Senator; and that Fridlender was a mere usurper.

Held, further, that as to third persons and the public, one who is an incumbent of an office, exercising its functions and duties, is an officer *de facto*, whether he be a usurper, or whether he entered under color of right. Per Champlin, C. J. Long and Grant, J. J., dissenting.

The constitution provides that "any member of either house may dissent from and protest against any act, proceeding or resolution which he may deem injurious to any person or the public, and have the nature of the dissent entered on the journal." *Held*, that the right to protest is merely a personal privilege, and the protest, though entered on the journal, could not affect the previous adoption of the resolutions, nor be used as a statement of facts to contradict the journal. Per Champlin, C. J., and McGrath and Morse, J. J. Long and Grant, J. J., dissenting.

Held, further, that the journals of the Legislature could not be impeached by any evidence of any kind whatsoever outside of the journals themselves, that the protest and affidavits, the former not being under oath, and the latter being only *ex parte* statements under oath without cross-examination, were not even of as much strength as parol evidence; and though they were entered on the journal, could not be used to contradict the showing in the journal that there were a quorum present when the resolutions were adopted. Per Morse, J. Long and Grant, J. J., dissenting.

The constitution, article 4, section 9, declares that each house shall judge of the qualifications, elections and returns of its members. *Held*, That such provision conferred on the Senate the exclusive power not only to determine the facts entitling a member to a seat, but to act judicially in seating him, and did not give the Court any power to review its action. Per Champlin, C. J. Long and Grant, J. J., dissenting on the ground that the journal of the twenty-fifth showed that the resolutions were adopted when a quorum of the Senate was not present, and that the Court might, for that reason, hold that the action was unconstitutional, and not in fact the action of the Senate.

Held, further, That the general superintending control which the Supreme Court possesses under article 6, section 3 of the constitution "over all inferior courts" does not give it power to review such judicial action of the Legislature, the Legislature not being "inferior courts" within the meaning of the constitution. Per Champlin, C. J.

Long and Grant, J. J. dissenting, held that as the journal of the 25th showed by the protest and affidavits spread thereon that there was not a quorum present when the resolutions unseating Morse and seating Fridlender were adopted, the resolutions were not constitutionally adopted, and Fridlander never became a Senator; and a bill subsequently passed by the Senate which, without counting his vote, had not the votes of the majority of the Senators was void and might be so held by the Supreme Court.

Long and Grant, J. J., dissenting. *Held, further*, that since the Senate has the power to review and rescind its actions, the protest and affidavits being filed by a majority of the Senators on the morning of the 25th before the journal of the 24th had been approved, and being spread on the journal, rescinded the action of the 24th protested against, even though the journal showed that a majority of the Senators were present when the action was taken.

Reported in 51 N. W., Rep., 483.

In the matter of the investigation of the charges against William F. Riggs, Prosecuting Attorney of Schoolcraft county. Prosecuting Attorney resigned.

Charges were preferred against the said William F. Riggs, Prosecuting Attorney, for refusing and neglecting to entertain complaint against certain keepers of houses of ill-fame in said Schoolcraft county. By virtue of section 658 of Howell's Statutes, an order was made by the Governor of this State directing the Attorney General to conduct an inquiry into such charges. On or about March 9, such inquiry was held in the village of Manistique, in the said county of Schoolcraft, and the evidence taken on the hearing submitted to the Governor. Before any determination was reached by the Governor, the Prosecuting Attorney resigned.

Clarence E. Cleveland vs. Edwin M. Amy, Assessor of School District No. 8. Application for a writ of *mandamus* to compel payment of a warrant drawn on respondent in relator's favor. Writ issued.

Relator was a school teacher, and on the 31st day of August, 1891, entered into written contract with Daniel B. Sanders, P. H. Doyle, and the respondent, who then constituted the district board, to teach the school in said district, commencing on September 7, during the term to be voted by the district at the annual meeting. An order was duly issued by Mr. Doyle as moderator, and Mr. Sanders as director, drawn upon respondent as assessor, for the payment to relator of a certain sum due him as wages. The assessor declined to pay, and relator petitioned for a writ of *mandamus* to compel such payment. Two reasons were given for the refusal to pay the order: 1. That the contract with the relator was made with the old board, and they had no authority to contract for the year, after the terms of two of the board would expire. 2. That at the annual election held in September one W. E. Chapman was elected director and one W. B. Durham was elected moderator, that they duly qualified, and, therefore, that Sanders and Doyle were not members of the board, and had no authority to act.

Held, 1. That under Howell's Statutes, section 5065, which empowers the district school board to hire and contract with such duly qualified teachers as may be required, the board need not wait for the annual meeting of the school district before hiring a teacher for the ensuing year, though the terms of two of the members of the board are about to expire, and their successors are to be elected at such meeting.

2. That the term "all other school officers," used in Howell's Statutes, section 5132, as amended by the act of 1885, which requires a majority vote to elect the "trustees and all other school officers," means the moderator, director and assessor, who comprise the board of the primary school district; and where no person receives a majority of the votes cast for these officers at the annual school meeting the old officers hold over.

Reported in 50 N. W. Rep., 293.

Maria B. Pinckney vs. Commissioner of the State Land Office. Mandamus to compel acceptance of interest on forfeited land certificate. Denied.

The relator in this case was the assignee and legal holder of State building land certificate No. L. 96. There was due on this certificate in interest

and penalty, the sum of $8.87. There was also due on the certificate in taxes the sum of $287.93. The relator had forfeited her certificate by failure to pay the principal and interest.

Said certificate was issued in 1848. The law at that time provided that certificates for part paid lands should be taxed. After forfeiture the party could redeem on payment of the amount due. The relator contended that this only contemplated the payment of interest and penalty and made her tender on that basis. The respondent refused to accept the tender on the ground that it was his duty, under the statute, to collect the taxes delinquent against the land, before he granted any certificate of redemption, claiming that the taxes were "charges" against the land.

The court denied the writ.

No written opinion was filed.

Common Council of Detroit vs. Board of Assessors of Detroit. Application for *mandamus* to compel the Board of Assessors to respect the provisions of Act No. 200 of the laws of 1891. Writ granted.

This proceeding brought before the Supreme Court for examination Act 200 of the Laws of 1891, being a revision of the general tax laws of the State. It was claimed—*First*, that this statute, as it appears upon the statute-book, was not duly enacted; and, *Second*, that the law as promulgated was in parts unconstitutional.

This law being the general tax law of the State of Michigan, the Attorney General prepared briefs and took part in the argument on behalf of the State to sustain the constitutionality of the act.

First, After House bill No. 178, file No. 340, a bill on taxation, had been reported by the committee with a substitute, and the substitute was printed, it was again referred to the committee, and, being reported by them, was laid on the table, and "ordered printed as a supplement in today's journal," where it appeared under the heading of "File No. 340, Substitute for Senate Bill No. 178." On the following day a motion was carried that House Substitute for Senate bill No. 178, file No. 340, be taken from the table and placed on its immediate passage. The question being on the passage of the bill, it was read a third time, and pending the vote on its passage, was laid on the table. On the following day a motion prevailed that House Substitute bill No. 178, file No. 340, be taken from the table and put on its immediate passage. After numerous amendments were made the bill was read a third time and passed, which was the final action of the House on the bill. The supplement print contained many sections which did not appear in the law as published, while others contained in the law did not appear in the supplement print, and nowhere did the journal, after the supplement print was ordered, contain any information that the bill was referred to, or reported by any committee, or that it was considered in the committee of the whole. The bill as printed in the supplement had its sections numbered consecutively. The bound volume of the journal contained an entry, as of the day of the passage of the bill, that after a statement was made that certain of the sections had been stricken out and others added in committee of the whole, which with the amendments made that day would not leave the sections in consecutive order, a motion to amend the bill by directing the engrossing and enrolling committee to renumber the sections was carried. *Held*, that the journal showed that the print of the bill with which the House was dealing on the

day of its passage was not that contained in the supplement, so that this could not be used to show that the bill, as engrossed and signed and published as Act No. 200 of the Public Acts of 1891, was not the bill passed by the House.

Held further, that a print of a bill issued as a supplement to a house journal in pursuance of a resolution that the bill be printed as a supplement in the day's journal, is to be treated as part of the journal.

Held further, that an entry in the bound volume of a house journal as of a certain date, not appearing in the journal as printed for that day, but appearing in the bound volume before and as of a date prior to the clerk's certificate, which bears the date of final adjournment of the legislature, will be presumed to have been made before the adjournment, and to have been authorized by the house, though a copy of the journal as prepared and repaged for the bound volumes, and certified by the clerk, does not show such entry, and though the journal shows no resolution authorizing any such entry.

Second, Act 200, Laws 1891, sections 2, 15 and 17, declare a real estate mortgage or other obligation by which a debt is secured on land within the State an interest in the land for the purpose of taxation, and provide that the value of the property, less the value of the security, shall be assessed and taxed to the owner of the property, and the value of the security shall be assessed and taxed to the owner thereof; that the taxes shall be a lien on the property and security, and may be paid by either party to the security after waiting a certain time; that if paid by the mortgagor the portion assessed to the mortgagee shall be treated as payment on interest due, or, if no interest is due, then as payment of so much of the principal: and that, if the mortgagee shall neglect to pay the tax assessed to him, it shall be collected from the mortgagor, and if not collected shall be returned against the land in the same manner as other delinquent taxes.

(1) The first criticism passed upon these provisions was that the law requires the mortgagor to pay the mortgagee's tax.

Held, that the act was not open to this objection, as the Legislature might cause the entire value to be assessed to the mortgagor, and that therefore the act, being in relief of him, could not be held invalid because it relieved him only on condition of payment by the mortgagee within a certain time.

(2) It was said that the mortgagor would have no right under the law to appear before the board of review to ask for a correction of the assessments of the mortgage interest.

Held, that under the provisions of section 20, where it is provided that at the request of any person whose property is assessed, and on sufficient cause shown, the board shall correct its assessment as to such property, the mortgagor can ask for a correction of the assessment of the mortgage interest as well as of his own.

(3) It was next suggested that where the interest of the mortgagee is assessed and remains unpaid, a sale is made of a fee-simple, and the deed conveys an absolute title.

Held, that though a sale is made of the fee, still sufficient protection is given to the mortgagor as well as the mortgagee by the provision of section 62 that only enough to pay the tax shall be sold.

(4) It was next claimed that the provision in the law that the mortgagor may pay the tax assessed against the mortgage interest in case of the

mortgagee's default, and deduct the same from the amount owing on the mortgage, impairs the obligation of contracts.

Held, that this provision does not impair the obligation of contracts, even though the deduction be from principal not yet due; it being merely the excusing of the mortgagor from paying the amount of the mortgage debt attached or seized by the State.

Held, further, that the provision in the law making the mortgagor liable for the tax assessed against the mortgagee does not violate the constitutional provision against enactments violating the obligation of contracts, since it would be competent to enact that the whole value of the land be assessed to the mortgagor.

(5.) It was urged that the law was unconstitutional, in so far as it attempts to tax mortgages owned by non-residents, for the reason that the mortgage is personal property and a mere security for a debt, and is of that character of personal property which must be held to attach to the person, and to have no other *situs* for any purpose.

Held, that a mortgage on land so far partakes of the character of realty that it is competent for the legislature to provide that the mortgage of a non-resident mortgagee shall be taxable where the land is situate.

(6.) The question was presented whether the mortgages held by savings banks and insurance companies are to be treated as real estate, and deducted from the amount of capital stock, or whether the tax on mortgages is over and above the tax on capital.

Held, that under the provisions of the act that all shares in banks shall be assessed at their value after deducting the value of real estate taxed to the banks, and that in computing taxable property of an insurance company the value of real property on which it pays taxes shall be deducted from its net assets, mortgages on land are to be treated as real estate.

Held, further, that the fact that mortgages held by savings banks represent deposits, and depositors are taxed, does not render the result produced by the taxation of the mortgages as real estate a double taxation, within the prohibition of the constitution.

(7.) It was suggested that, where lands covered by mortgage lie in two or more taxing districts, it will be impossible to properly apportion the tax.

Held, that where lands covered by an existing mortgage lie within two or more taxing districts, the amount of mortgage interest to be taxed in each district will be that proportion which the value of the land lying in that district bears to the whole.

(8.) The question was suggested as to whether the statute was to be so construed as to relieve mortgagors from the obligation of paying the tax in cases where there were agreements on their part to do so in force at the time when the law took effect; and also as to whether it was competent for the mortgagor to engage to pay the taxes which might be assessed against the mortgagee's interest in the lands, in addition to paying the full legal rate of interest allowed by statute.

Held, that where, at the time the act took effect, there were existing agreements on the part of mortgagors sufficiently broad to render them liable for the tax on the mortgagee's interests, they would not be affected by the act; and that neither such act nor the usury law would prevent subsequent agreements by mortgagors to pay the tax against the mortgagee's interest, as well as the highest legal rate of interest.

Reported in 51 N. W. Rep., 787.

Attorney General vs. Daboll, Circuit Judge. *Mandamus* to compel setting aside order discharging prisoner, held under act No. 228 of the laws of 1889. Denied.

One John Wilson was sentenced to the State Prison at Jackson by the Circuit Court of Calhoun county, April 5, 1890, having been convicted in that Court of the crime of larceny. Wilson, by this sentence, was ordered to "be confined in the State Prison at Jackson under provision of act No. 228 of the Public Acts of 1889, at hard labor, for the period of not exceeding five years from and including this day; and the said Court gives as his reason for said sentence that he believes the said John Wilson to be a confirmed criminal." It will be seen that Wilson was not sentenced for any definite term, but the judgment of the Court was attempted to be imposed under the law known as the "indeterminate sentence act," which act had been declared unconstitutional by the Supreme Court. People v. Cummings, 50 N. W. Rep. 310. Wilson applied for the writ of *habeas corpus* to the Circuit Court for the county of Jackson, within which county said prison is situated. The writ was granted, and a hearing had upon it before Hon. S. B. Daboll, Circuit Judge (See page 15 of this report). The Circuit Judge in his opinion, among other things, said: "This is a test case, and there are about twenty prisoners serving sentences imposed under this law. I shall order a stay of proceedings until a meeting of the Supreme Court, January 5, to allow the Attorney General an opportunity to take proper proceedings, if he desires, to review this matter, and thus finally settle the question involved, which is of great importance to both sides. An order will be entered that the prisoner be discharged by the warden, but all proceedings thereon are hereby ordered stayed until the 6th day of January, or until further ordered by the Court." The Attorney General applied to the Supreme Court for a writ of *mandamus* directing said Circuit Judge to vacate his order.

Held, that the Supreme Court has no power to review the order of the Circuit Judge by *mandamus*.

Reported in 51 N. W. Rep., 280.

Ovid Elevator Company vs. Secretary of State. Application for a writ of mandamus to compel filing articles of association. Writ allowed.

The relator was a corporation organized under Act No. 232, Public Acts 1885. Its articles of association were filed January 14, 1889. By article 6, its corporate existence was fixed for the term of three years. On the day that such corporate existence would have expired, January 14, 1892, the stockholders met and passed the following resolution by the unanimous vote and consent of all the stockholders: "Resolved, that the articles of association of the Ovid Elevator Company be, and the same are hereby amended with the consent and vote of all the stockholders, by changing the word 'three' to 'thirteen,' in article 6, so that the same shall read as follows: 'Art. 6. The term of existence of this corporation is fixed at thirteen years from the date hereof.' Resolved, further, that the president and secretary are hereby instructed to file in the proper offices, as required by law, a copy of this resolution, duly signed and certified by them." On the same day the proper certificate was filed and recorded in the office of the county clerk of Clinton county, as required by law. A duplicate certificate was on the same day presented to the Secretary of State, which he refused to file, upon the ground that the proceedings for

the extension of the corporate existence should have been taken under section 33 of the act under which the relator was organized, and not under section 17, which simply provides for amendment of the corporate articles, and under which section the relator acted.

Said section 17, provides that any corporation organized under its provisions may "amend its articles of association in any manner not inconsistent with the act * * * and such amendment shall have the same force and effect as though said amendment had been included in the original articles." Said section 33 provides that any corporation organized under this act, "whose corporate existence is about to terminate by limitation of law," may, by resolution, continue its corporate existence for a further term, "not exceeding thirty years." Constitution, article 15, section 10, provides that no corporation shall be created for a longer period than thirty years. *Held,* that the words "terminate by limitation of law," in section 33, apply only to the statutory or constitutional limitation of thirty years, and that a corporation created under said act, whose corporate existence is fixed by its articles of association, at less than thirty years, may extend such corporate existence by amending its articles of association under section 17.

Reported in 51 N. W. Rep., 536.

Chicago and Grand Trunk Railway Company vs. Wellman. Error to the Supreme court of the State of Michigan. Affirmed.

In 1889 the Legislature of this State passed Act No. 202 of the Public Acts of that year, by which, among other things, section 3323 of Howell's Statutes, being a part of the railroad law of the State, was amended. That section provides that all railroad companies, the gross earnings of whose passenger trains equal to or exceed the sum of $3,000 per mile of road operated by said companies shall charge two cents per mile fare.

Prior to the passage of this law the regular fare charged on plaintiff's road from Port Huron to Battle Creek was three cents a mile, or $4.80. On the very day on which the law took effect, to-wit: October 2, 1889, Mr. Wellman went to the company's office in Port Huron and tendered $3.20 for a ticket from that place to Battle Creek, which was refused. He thereupon brought an action for damages. On November 22, 1891, less than two months from the time the law went into effect, the case was tried, and a verdict and judgment entered in the favor of said Wellman for the sum of $101. On the trial in the Circuit Court it was agreed that the company's earnings exceeded $3,000 per mile; that its capital stock was $6,000,000, and had been fully paid in; that its bonded debt was $12,000,000, one half bearing six percent and the other half five percent; that the railroad property was at the time worth more than the capital stock and mortgage debt; that in addition to the mortgage debt there was a floating indebtedness of the amount of $896,906.40. In addition to this agreed statement of facts, the traffic manager and treasurer of the railroad company testified substantially that in view of the competition prevailing at Chicago for through business it was impossible to increase the freight rates then charged by the company. Upon such agreed statement and testimony, and that alone, the railroad company asked an instruction that the act of 1889 referred to is unconstitutional. The Court refused this instruction.

The Court charged the jury that the act was valid and that Wellman was

entitled to verdict and judgment. On this charge no exceptions were taken.

The case went from the Circuit Court to the Supreme Court of this State where it was affirmed. The company then appealed to the Supreme Court of the United States, where the decisions of the Circuit Court and the Supreme Court were affirmed.

The holding of the Court was substantially as follows:

First, That the Legislature of the State has the power to fix rates for transportation which may be charged by railroad companies, and the extent of judicial interference is protection against unreasonable rates.

Second, The Circuit Judge did not err in refusing to instruct the jury that the act referred to is unconstitutional merely upon the agreed statement showing that the income of the company at the rates existing before the enactment of such statute, was entirely consumed by the operating expenses and fixed charges, and that an increase of freight rates would diminish the income of the road, there being no evidence to show that a reduction in the passenger rates would not increase the travel sufficiently to equalize the earnings, most of which the operating expenses consisted.

Third, That, whenever in pursuance of an honest, antagonistic assertions of rights there is presented a question involving the validity of a statute, and the decision rests on the competency of the Legislature to enact, the Court must determine whether the act be constitutional or not, but it never was thought that by means of a friendly suit a party beaten in the Legislature could transfer to the courts an inquiry as to the constitutionality of a statute.

Reported in 12 Supreme Court Rep. 400.

For decision of State Supreme Court see 47 N. W. Rep., 489.

Auditor General vs. Aldrich, Circuit Judge. *Mandamus* to compel Circuit Judge to vacate his order setting aside certain taxes. Granted.

The Circuit Judge set aside certain delinquent taxes, on the ground that the "Roscommon Democrat," the newspaper in which the notice of sale and the list of taxes were published, was not established two months at least prior to the first day of July of the year in which the lands were sold for taxes, as required by section 70 of the tax law of 1889.

As shown by the evidence on the hearing, the first issue of the paper was on April 22, 1891, and that on the 23d of April it was duly entered in the post-office at Roscommon, Mich., the county seat of the county in which the lands were located, and had ever since been regularly sent through the aforesaid post-office to its subscribers in the county. The printing press however was not taken to Roscommon and set up in running order until about May 13, or a month and a half before the first day of July, the paper being printed in another county and from there sent to Roscommon, where it was circulated through the county.

The only question in the case was whether a paper issued under such circumstances was an "established" paper within the meaning of the statute; or, in other words, was it necessary that the printing should be done in the same county in which the paper was issued and circulated in order to make it established.

The Court granted the writ, holding that the paper was an "established" one within the meaning of the statute.

No written opinion was filed.

William Burgess vs. William F. Neale, Deputy County Clerk of Calhoun County. *Mandamus.* Writ denied.

This was a petition for *mandamus* to compel the deputy county clerk of Calhoun county, who had an office at Battle Creek, to receive the declaration of intention of the relator to become a citizen. The home of the relator was at Battle Creek, some thirteen miles distant from Marshall, the county seat. The respondent was a duly appointed deputy county clerk of the county, who had an office for the transaction of business in the city of Battle Creek. The petition alleged, among other things, that the relator was a laboring man and was unable, by reason of his duties, to go the county clerk's office and take his oath as aforesaid.

The relator contended that under the ruling of the Supreme Court in the case of Andreas vs. Arnold, 75 Mich., 85, it was the duty of the respondent, as deputy clerk, although he was not at the clerk's office, to administer the oath to the relator and receive his declaration of intention to become a citizen.

The court, however, denied the application for an order to show cause.

No opinion was filed.

Central Oil Gas Stove Company vs. Secretary of State. *Mandamus.* Writ granted.

This was an application for *mandamus* to compel the Secretary of State to file articles of association of the Central Oil Gas Stove Company, a foreign corporation, organized under the laws of the State of Maine.

The refusal of the Secretary of State to file such articles was based upon Section 2 of Act 182 of the Public Acts of 1891, which is an act to provide for the payment of a franchise fee by corporations.

The court granted the writ on the ground that said act did not include in its provisions corporations organized without the State.

No opinion was filed.

Attorney General vs. Wayne County Treasurer. Application for a writ of *mandamus* against county treasurer. Granted.

This was an application for a *mandamus,* directing the county treasurer to refrain from receiving and receipting for a liquor tax before the filing of the bond required by statute. Respondent contended that there was no provision of the statute requiring the approval and filing of the bond to precede the issuing of the receipt for the tax. The statute prohibits the applicant from engaging in the saloon business until the bond is approved by the proper body, and filed with the county treasurer, the tax paid, etc. The simple question before the Court was whether the statute contemplated that the county treasurer should receive the amount of the tax, and issue a receipt therefor, until such time as the party proposing to pay the tax became entitled lawfully to engage in that business by complying with the other provisions of the statute. The statute requires that the bond shall be approved by the township board, the village council or the common council; but the bond is not filed with the town clerk, the village clerk, the city clerk, or the county clerk, but the statute expressly provides that it shall be filed with the county treasurer.

Held, that a county treasurer has no right to receive and receipt for such tax before the filing of the bond.

Citing Rode vs. Phelps, 80 Mich., 610 (45 N. W. Rep., 493).
Reported in 51 N. W. Rep., 1072.

People ex rel Samuel Rosenthal vs. Secretary of State. *Mandamus.* Writ granted.

The relators in this case were a benevolent association, incorporated under chapter 164 of Howell's Statutes. They possessed no capital stock.

The Secretary of State refused to file the articles of association, basing his refusal on section 2 of act No. 182 of the Public Acts of 1891.

The Court granted the writ on the ground that said act No. 182 did not apply to corporations not having any capital stock.

No opinion was filed.

William McPherson, Jr., et al., vs. Robert R. Blacker, Secretary of State. Application for a writ of mandamus to compel the Secretary of State to give notice of an election of electors of President and Vice President of the United States. Writ denied.

The relators were candidates for offices of electors of President and Vice President, placed in nomination by the Republican party. They asked for a *mandamus* to compel the respondent to give notice of an election to be held on the first Tuesday after the first Monday in November to fill such offices, under the statute in former years, providing for the election of electors by the State at large.

The relators alleged that act No. 50 of the Public Acts of 1891, known as the "Miner law" was unconstitutional and void for the reasons:

First, That the law was in conflict with article 2, section 1 of the Federal Constitution in this, that it attempted to delegate to portions of the State, fixed as districts by the Legislature, the power to name electors; whereas, the section referred to, it was contended, conferred this authority and duty upon the State at large, acting as a corporate unit in its corporate capacity.

Held, that said act No. 50 did not violate the constitution of the United States, article 2, section 1, which declares that "each State shall appoint in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in Congress," since, in view of the construction placed upon the constitution contemporaneously with and for forty years after its adoption, by the legislatures of different states, in providing for the choice of electors by districts, and by the writings of statesmen who were instrumental in framing it, and in view of the construction placed upon article 1, section 2, declaring that the House of Representatives shall be composed of members chosen "by the people of the several states," said section 1 of article 2 must be construed as conferring on the Legislature plenary power to prescribe the method of choosing the electors, and not as requiring the State, in appointing them, to act as a unit.

Held, further, that this construction would not be affected by the fact that after it had been so placed on the constitution for forty years all the states abandoned the method of choosing the electors by districts, and adopted the method of electing them by the voters of the State at large, and that the latter method had continued for sixty years, since it did not of

necessity involve a negation of the right of the Legislature to prescribe the former method.

The abandonment by the State Legislature of a method of choosing presidential electors authorized by the Federal Constitution, and the adoption and exclusive use for a great number of years of another authorized method, would not impair their power to readopt the former method, since the State could not by non user lose the power to exercise rights expressly delegated in the constitution.

The 14th amendment to the constitution of the United States provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and that, "when the right to vote at any election for the choice of electors of President and Vice President * * * is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, * * * the basis of representation shall be reduced." The 15th amendment to the constitution of the United States declares that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." *Held*, though at the time of their adoption all the states chose their presidential electors by the voters of the state at large,—that would not, on the ground that they had relation to the conditions then existing, by implication repeal article 2, section 1, of the constitution, in so far as it allows the states to prescribe any other method the Legislature should appoint for choosing electors, since, even if by their terms they could have that effect, the contemporaneous construction placed upon them by statesmen who participated in their adoption showed that they were not so intended.

Second, It was contended that, even though the Legislature might thus delegate the authority to districts, the law enacted was fatally defective in the following respects:

(*a*) That it violated article 4, section 20, of the constitution of this State, which provides that no law shall embrace more than one object which shall be expressed in its title, in that it provides for the election of alternate electors, whereas the title related only to choosing electors.

(*b*) That the act was inoperative for the reason that it failed to provide means for canvassing the votes for electors in those portions of Wayne county which constitute the first, and portions of the second, sixth, and seventh electoral districts.

(*c*) That even if the election of alternate electors were valid, the act made no provision for filling the office in case both the elector and alternate elector should die, or become disqualified before performing their duties.

Held, (1) That the act in providing for the election of alternate electors as well as electors did not violate the constitution of Michigan, art. 4, sec. 20, providing that no law shall embrace more than one object, which shall be expressed in its title, since it merely provided for filling vacancies occasioned by the death or disability of the electors.

(2) That the act was not invalid because it failed to provide for filling a vacancy in case it might occur by the death of both the elector and the alternate.

(3) Nor was the act invalid because it failed to require notice of the election of the district electors provided for, since they were to be chosen at the general election referred to by Howell's Statutes, sec. 147, which

expressly requires that the Secretary of State shall give notice that Presidential electors are to be chosen.

The act further provided that the counting, canvassing and certifying of the votes cast for Presidential electors at large and their alternates, and the district electors and their alternates "shall be done as near as may be as is now provided by law." The general law, (Public Acts of 1891, No. 190), provided for inspectors of elections for elections at which Presidential electors might be voted for. Section 36 provided for a canvass of the votes. Section 38 required duplicate statements of the result to be prepared, one copy of which was to be delivered to the inspector appointed by the board to attend the county canvass. Howell's Statutes, sections 184 and 185 provide that the board of canvassers should canvass the votes and prepare the statement of votes given for Presidential electors.

Held, that the act was not inoperative on the ground that it failed to provide means for canvassing the votes for electors in those portions of Wayne county which constitute the first, and portions of the second, sixth and seventh electoral districts, since those districts were defined by law, and it would be the duty of the inspectors to designate the district in which the elector was to be voted for, after which there could be no difficulty in canvassing the votes.

The act in question conflicted with the law of Congress in so far as it attempted to fix a date for the meeting of electors different from that fixed by the law of Congress.

Held, that this fact would not render the other provisions of the act inoperative.

Reported in 52 N. W. Rep., 469.

John W. Fitzgerald vs. Auditor General. Application for writ of *mandamus*. Denied.

Relator asked for a writ to compel the Auditor General to issue a deed of certain tax lands sold for delinquent taxes. The owner of said lands resided in the village of Grand Ledge, a distance of ten miles from the capitol. On the 30 day of April, the last day for the redemption of delinquent tax lands, at about 8 o'clock in the evening, the owner of said lands, by his attorney, telephoned the Auditor General and asked him to advance the money for the redemption of said lands, which the Auditor General refused to do, but instructed him to mail it that night and it would be all right. He thereupon mailed to the Auditor General the money to redeem said lands, but such money did not arrive until the morning of the Monday following, which would be May 2d.

The court held that, inasmuch as the Auditor General instructed him to forward the money by mail, stating that that would be in time to redeem the lands, the redemption was good, as otherwise he might easily have driven from Grand Ledge to Lansing, a distance of ten miles, and deposited the money with the Auditor General that day.

No opinion was filed.

Burton F. Brown et al. vs. Auditor General. *Mandamus*. Granted.

Relators asked for a writ to compel the Auditor General to pay forty cents a description for work done in publishing the delinquent tax lists.

In Brown vs. Auditor General *supra*, the Court issued an order to the

Auditor General to pay the amount due relators for publishing said tax lists. Under this order the Auditor General claimed that all that was due them was what such work would be worth, and it was shown that it could be done for five cents a description. The price usually paid for such work is forty cents a description.

The court held that the relators were entitled to forty cents a description less the value of the work necessary to complete such publication, after the order of the Auditor General of January 27th to discontinue such publication.

No opinion was filed.

MANDAMUS AND OTHER PROCEEDINGS PENDING.

The People of the State of Michigan vs. Hulbert H. Warner and John D. Weeks. Ejectment.

Auditor General vs. Bay County Treasurer.

In the matter of the petition of George W. Wool for admission to the bar.

In the matter of Dennis Heffron, sheriff of Schoolcraft county, pending before the Governor.

Theron F. Giddings vs. Secretary of State.

Houghton County Supervisors vs. Secretary of State.

QUO WARRANTO PROCEEDINGS PENDING.

Attorney General vs. the Toledo, Ann Arbor and North Michigan Railway Co.

SCHEDULE C.

This schedule contains a list of all chancery cases commenced or completed between July 1, 1891 and July 1, 1892 and cases now pending, in which the State is directly interested.

In re Flint & Pere Marquette Railroad Company. Appeal from St. Clair County. In chancery.

Petition by the Flint & Pere Marquette Railroad Company to obtain an order or decree to abandon and take up its tracks between Yale and Zion, and to abandon Fargo station. Petition dismissed. Petitioner appealed. Reversed.

This was a proceeding by the petitioner under Act 275, (Public Acts 1887,) to obtain an order or decree for the abandonment and taking up of its tracks between Yale and Zion, and to abandon one of its stations. The case was heard as in a suit at law, proofs were taken, and the petition dismissed, and the petitioner appealed. The law above mentioned provides that it shall be unlawful for any railroad company, whose road has been constructed, wholly or in part, by public aid or local subscription, given as a bonus for such construction, having once constructed and put in operation the whole, or any portion, of said road, and located and opened for business stations and houses thereon, to thereafter take up, abandon, or cease the operations of its said track, or any portion thereof, or to close up and abandon its said station and station-houses, except upon the order or decree of the Circuit Court of the county through which said road may run, and in which it is desired to take up and abandon such track. The law then provides for the filing of a petition by the company, for a citation to the Commissioner of Railroads, for a publication of the pendency of the petition, and for a hearing, "in like manner as is provided by law for other chancery proceedings in this State" It also provides that any citizen interested may appear and be heard in opposition to the petition. The Attorney General, and also a citizen, appeared and filed answers.

Held, that the petition should have been granted where it appeared that the petitioner had instituted proceedings to change its line in the manner prescribed by statute, and had presented a map and survey of the line to the state board, which approved the change; and that one of the two branches of petitioner's line, as changed, would pass through Yale, and the other through Zion, that the interests both of petitioner and of the general public would be subserved by the abandonment of the piece of road in question; that traffic over such piece of road did not, and never would, pay; and that its abandonment would seriously injure only those persons living three miles either way from the intermediate station.

Held, further, that where the petition of a railroad company to abandon a portion of its line is granted, the title to the land which was taken for right of way and for other railroad purposes reverts to the original owners, without a reconveyance or order of the court; and under Public Acts 1891, No. 125, individuals who contributed to the construction of the line should be repaid, with interest.

Reported in 51 N. W. Rep., 1001.

In re Wiley. Appeal from Tuscola Circuit Court, in Chancery. Petition Washington G. Wiley to set aside a decree ordering the sale of his land for a delinquent tax. The petition was dismissed and the petitioner appealed. Affirmed.

The petitioner was the owner of forty acres of land in Elmwood township, Tuscola county, of the assessed valuation of $200, and against which a tax was assessed for a township drain in the year 1887. The other taxes were paid, and the land returned delinquent as to this drain tax. The petitioner was not the owner of the lands at the time the tax was assessed, and did not become so until after they were returned to the Auditor General for this delinquent drain tax. Russell A. Clark was the owner of the lands at the time the tax was assessed, and thereafter deeded the same to one Corey, who deeded to Wiley, the petitioner, who placed his deed on record prior to the time of filing the petition by the Auditor General, upon which the decree was made, and which was, by this proceeding sought to be set aside. The Auditor General filed his petition in the Circuit Court in chancery for Tuscola county in the form required by the tax law of 1889. Upon the filing of this petition a subpœna was issued by the register of that court, directed to be served on Russell A. Clark. No protest was filed against the alleged lien by any person. Upon the filing of the petition, the Auditor General caused a copy of said petition to be published, as required by section 54 of the tax law of 1889. At the February term of 1890 a default decree was entered against the lands for the full amount claimed.

In May, 1890, the lands were offered at the tax sale. No one bidding therefor, the State became the purchaser for $108.16. At the time the petition was filed, the State claimed $121.17. Mr. Wiley claims to have first heard of this sale in March, 1891, when he filed his petition in the Circuit Court for the county of Tuscola, in chancery, asking to have the decree set aside, and that he have opportunity to appear and defend against the tax; and alleging that the whole tax was void, by reason of certain irregularities in its assessment. This petition came on to be heard before the Circuit Court on May 18, 1891, when the petition was dismissed.

The tax law of 1889, section 53, declares that, after the filing of the petition by the Auditor General for a decree to sell lands for delinquent taxes, the county clerk shall issue a subpœna to each delinquent taxpayer who is a resident of the State, to be personally served on the taxpayer if he can be found in the State, and that, if he shall not appear, the petition shall be taken as confessed, and a decree entered against him. Section 54 provides for the publication of the petition, and a citation therein that all persons interested in the land appear and defend, and declares that such publication shall be equivalent to a personal service on all not personally served, and shall give the court jurisdiction to decree a sale of the lands. *Held*, that the Court had jurisdiction to decree a sale of land without personal service having been made on an owner who purchased after the tax was assessed, though he may have recorded his deed before the filing of the auditor's petition, and though the publication of the petition and notice may have been as against the person who owned the land when it was assessed, and whose name appeared on the assessment roll.

Reported in 50 N. W. Rep., 742.

State *ex rel.* Attorney General vs. Sparrow *et al.*

Bill in equity by the State of Michigan on the relation of the Attorney

General against Edward W. Sparrow and others for the cancellation of certain patents of swamp land. Complainant had decree, and defendants appeal. Reversed.

The bill in this case was filed by the State for the cancellation of certain patents for lands issued to defendant Sparrow. The defendant company is a grantee of Sparrow. These patents were issued under the authority of Act 130, Laws 1883, and Act 84, Laws 1885. Under the former act, 10,000 acres of swamp lands in the lower peninsula were appropriated to aid in certain improvements in the county of Livingston. By the latter act, 12,800 acres were appropriated for a like purpose in the counties of Shiawassee and Clinton. These appropriations were of swamp lands not otherwise appropriated. The acts are very similar, the chief difference being in the fact that the first act provided for raising the cost of construction in excess of the appropriation of lands by a tax upon the lands benefited, while the latter act provided for raising it by subscriptions and taxation. Defendant Sparrow was the lowest bidder, and contracts for the performance of the work were let to him.

It was urged by the counsel for the State that the lands patented to Sparrow under the act of 1883 were listed and obtained by Sparrow in fraud of the State. The record showed that the improvement of the Cedar river under that act cost Mr. Sparrow about $16,000. The Looking Glass improvement under the act of 1885 cost him about $9,500. For these jobs he located and received lands worth certainly over $100,000, and probably a million of dollars.

The Court held, (1) That said act of 1883 appropriating swamp lands for public improvements in Livingston county, and said act of 1885 appropriating swamp lands for public improvements in Shiawassee and Clinton counties were not unconstitutional, as providing for unauthorized internal improvements, and patents of land issued pursuant thereto were authorized and legal.

Sparrow vs. Commissioner, 23 N. W. Rep., 315, 56 Mich., 567, followed.

(2.) That where one under contract with the State, under an act of the legislature for public improvements, obtained the right to make selection from certain swamp lands in payment thereof, it was no fraud on the State that he selected the most valuable lands.

(3.) That under said acts the contractor could appropriate swamp lands for which the State had not received patents from the United States, and which had not been offered at public auction, but the title to which had passed to the State under the swamp land act, (Act Cong. Sept. 28, 1850.)

Reported in 50 N. W. Rep., 1088.

List of Chancery Cases Pending:

Alfred L. Millard vs. Jerome Truax *et al.* Bill to restrain issuing of tax deed.

Maria B. Pinckney vs. Commissioner of the State Land Office. Bill to restrain sale of land.

Auditor General vs. Arthur Hill. Appeal from Chippewa Circuit Court in chancery.

SCHEDULE D.

This schedule contains a list of *quo warranto* and other special proceedings, authorized by the Attorney General in the name of the State, but directed by and at the expense of the parties interested.

The People *ex rel.* John R. McDonald vs. Board of Supervisors of Alcona County, *et al.* Proceedings quashed.

At a special meeting of the Board of Supervisors of the county of Alcona, held November 12, 1890, at which all the members were present, they sold the "old poor farm," so called, to Jeremiah T. Perkins, who was a supervisor and the chairman of the board, for $2,200. The buildings upon this farm had recently burned. The board at the same meeting purchased what was called the "Mudgett Farm," consisting of 280 acres, for $6,500, and sold off from that farm 200 acres to Joseph Yuill, also a supervisor, for $3,000, retaining the remaining 80 acres and buildings for a poor farm.

Held, that since Howell's Statutes, Section 483, subd. 4, empowers the Board of Supervisors of a county "to authorize the sale or leasing of any real estate belonging to the county," a sale by them of a poor farm belonging to the county to one of the members of the board is not an illegal exercise of a franchise, that may be inquired into by a writ of *quo warranto*.

Howell's Statutes, Section 8662, provides that an information in the nature of a writ of *quo warranto* may be filed by the Prosecuting Attorney on his own relation, or that of any citizen of the county, without leave of the Court, "or by any citizen of the county by special leave of the Court." *Held*, that an information may be filed by a citizen other than the Prosecuting Attorney only upon leave of the Court, and it is insufficient to obtain the permission of the Circuit Judge sitting at chambers; but it is not ground for demurrer that, after such petition for leave was granted, it was not filed in the clerk's office before the filing of the information.

The information was filed against the Board of Supervisors of the county, the county clerk, and the keeper of the poor farm to inquire into their authority to sell a piece of land owned by the county, to make and deliver a deed to the same, and to surrender possession of the premises to the purchaser. *Held*, demurrable for misjoinder of complaints and offenses; there being nothing in common between such acts, so far as any usurpation or illegal exercise of franchises is concerned.

Reported in 51 N. W., Rep. 1114.

The People *ex rel.* Joseph Fuller vs. Lucian C. Palmer. Proceedings quashed.

This was a *quo warranto* proceeding commenced by the Attorney General in behalf of the people on the relation of Joseph Fuller to inquire

into the right of the respondent to hold the office of Judge of Probate of Montcalm county. The cause was at issue by proper pleadings, and from which it appeared that the Judge of Probate of that county, Edward P. Wallace, on November 12, 1890, resigned his office, and on the day following the respondent was appointed by the Governor to fill the vacancy. The respondent had exercised the duties of that office since his appointment. In the latter part of March, 1891, the several political parties of that county put in nomination candidates for the office of Judge of Probate, and the Sheriff of the county gave public notice on March 13 that an election would be held on the 6th day of April next following, not only to fill the office of Justice of the Supreme Court, and two Regents of the University, but also to fill the office of Judge of Probate, "to fill the vacancy caused by the resignation of Edward P. Wallace." Due notice was also given of such election by the several township clerks and inspectors of election throughout the county. Joseph P. Shoemaker was the democratic candidate, the relator, Joseph M. Fuller was the republican candidate, and John Stearns the prohibition candidate, at said election, each nominated by regularly called county conventions. Joseph M. Fuller, the relator, received a majority of all the votes cast, being over three hundred votes over the combined vote of Shoemaker and Stearns. It also appeared that the several candidates for Judge of Probate received as many votes at said election as the candidates for the office of Justice of the Supreme court less seven votes only. It was claimed by the relator that the respondent under the constitution, could hold his office by appointment only until such a time as his successor should be elected and qualified, and that the election was a general one for the purpose of electing a Judge of Probate to fill the vacancy of which notice was duly given; or that, if the notice was not such as the statute prescribes, the fact that the people regarded it as such, and voted in such large numbers, must make it a valid election, and one by which the relator would be entitled to oust the respondent, and be himself given the office.

The respondent claimed: (1) That he held the office of Judge of Probate by appointment from the Governor, which entitled him to the office until his successor was legally elected and qualified. (2) That his successor could only be elected at an election called in the manner provided by law,—that is, by order of the Board of Supervisors of his county; and that an election held for that purpose at any other time was not a legal election. (3) That the relator was not legally elected to the office of Judge of Probate, because the special election at which he claimed to have been elected was not called by legal authority; nor was any legal notice given of such an election by the officer required by law to give such notice.

Constitution article 6, section 21, provides that the first election of Probate Judges "shall be held on the Tuesday succeeding the first Monday in November, 1852, and every fourth year thereafter." Howell's Statutes section 137, provides that a "general election" shall be held on the Tuesday succeeding the first Monday in November, 1852, and "every second year thereafter, at which there shall be elected so many of the following officers as are to be chosen in such years," including among others, "Judges of Probate." Howell's Statutes section 2, paragraph 19, provides that the words "general election," shall be construed to mean the election held in November. *Held*, that the words "general election," as applied to

the office of Judge of Probate, mean the biennial November election, any election to that office at any other time being a "special election."

Howell's Statutes section 138, paragraph 4, provides that a "special election" may be held "when a vacancy occurs * * * after the commencement of the term of service, and more than six months before the next general election." Section 140 provides that no special election shall be held within three months next preceding a general election, except in cases where the Governor shall order a special election. Section 141 provides that special elections for the choice of county officers including Probate Judge, shall, except when ordered by the Governor, be ordered by the Board of Supervisors. *Held*, that the only power, under the statutes, to order a special election to fill a vacancy in the office of Judge of Probate is vested in the Governor or the Board of Supervisors, and such special election may be called without reference to the date on which the spring election is held for the election of township officers.

Held further, that where a special election for Judge of Probate was not called by legal authority, the fact that the people voted for the several candidates put in nomination would not render the election valid.

Reported in 51 N. W., 999.

Attorney General *ex rel.* George C. Lawrence vs. David Trombly. Proceedings quashed.

This was a proceeding in the nature of a *quo warranto* by the Attorney General on the relation of George C. Lawrence to compel David Trombly to show by what warrant he held the office of county auditor.

Howell's Statutes, section 483, subdivision 16, gives to the Board of Supervisors of a county the management of the business of the county in all cases where no other provision is made. Section 484, requires for such matters a two-thirds vote of all the members of the board. *Held*, that said sections have no application to the power of the supervisors to order a special election for county officers, as that power is expressly given by section 141.

Held, further, in such case the necessary vote is prescribed by section 475, providing that "a majority of the supervisors of any county shall constitute a quorum for the transaction of the ordinary business of the county."

An election of county auditors for unexpired terms was ordered for the general spring election, at which State officers were to be elected. *Held*, that no call by the supervisors for a special election was necessary.

Held, further, that where such election, in the notices thereof was termed a "special" one, the validity of the notice or of the election was not affected thereby.

Howell's Statutes, Section 667, gives the Governor power to fill vacancies in county offices for the unexpired terms thereof. *Held* unconstitutional, as it deprives the electors of their constitutional right to elect for such unexpired terms.

The relator was appointed by the Governor to fill a vacancy in a county office. *Held*, that the failure of the electors of the county to elect for such office at subsequent elections did not confirm such appointment for the unexpired term.

Reported in 50 N. W., Rep. 744.

The People *ex rel.* Attorney General vs. Village of Highland Park. Judgment for Respondent.

This was a *quo warranto* proceeding on the relation of the Attorney General to inquire by what authority the village of Highland Park exercised the functions of a municipal corporation.

House bill No. 214, amending the charter of the city of Detroit, and enlarging its boundaries, detached from the village of Highland Park, which had been duly incorporated, the greater part of its territory; the greater part of the inhabitants of the village being residents of the detached territory. The president of the village, three of the six trustees, the clerk, treasurer, assessor, and constable, resided in the detached territory, leaving only three trustees and the street commissioner residents of the undetached territory. *Held*, that the act did not by implication repeal the charter of the village, and it had the right to fill the vacant offices by election.

That in such case, since Howell's Statutes, Section 2787, provides that, if any officer shall cease to be a resident of the village during his term of office, the office shall be thereby vacated, the trustees residing in the territory detached by the act ceased to be officers, and could not legally participate in a meeting of the village council, for the purpose of ordering a special election to fill the vacancies.

Where, however, such trustees have participated in the meeting of the council, at which a special election was ordered, and most of the electors had acted on the validity of the notice of such election, and voted for and elected new officers to fill the vacancies, the election would be held valid.

Reported in 50 N. W. Rep., 660.

Quo warranto Proceedings Pending:

The People *ex rel* Attorney General vs. Lewis E. Howlett.

Attorney General, *ex rel* Leavitt vs. Peter McQuade.

SCHEDULE E.

This schedule contains a list of all chancery cases commenced or determined between July 1, 1891 and July 1, 1892, or pending in which some State officer has been made a party, and in which the State has some interest. These cases have been by the Attorney General referred to the Prosecuting Attorneys of the various counties in which they are pending, and left in their charge.

Dillas P. Morse vs. Auditor General *et al.* Bill in chancery in Sanilac county.

Wesley H. Quimby vs. Auditor General *et al.* Bill in chancery in Sanilac county.

Antoniette Drum vs. Auditor General *et al.* Bill in chancery in Sanilac county.

Baltis Buss vs. Auditor General *et al.* Bill in chancery in Sanilac county.

Keweenaw Association (limited) vs. School District No. 1 of Hancock Township *et al.* Bill in chancery in Houghton county.

Commissioner of Banking vs. Milford State Bank. Bill to wind up affairs of bank and appoint receiver. Oakland county.

Cornelius DeJough Jr. vs. Commissioner of State Land Office. Bill in chancery in Ottawa county.

Blanche J. Mower vs. Auditor General *et al.* Bill in chancery in Midland county.

Jonas R. Learned vs. Auditor General *et al.* Bill in chancery in Tuscola county.

Mary E. Herbert vs. Auditor General *et al.* Bill in chancery in Arenac county.

SCHEDULE F.

This schedule contains a statement of all moneys received by the Attorney General by way of collection, debts due, or penalties forfeited to the people of this State, or otherwise, and which have been paid into the State Treasury including the titles of all actions and proceedings in which said moneys were received:

In the matter of C. J. Phelps, ex-County Treasurer of Ogemaw county. The County Treasurer had collected certain State taxes and failed to pay over the same to the State. After a considerrble correspondance and a personal visit, the Attorney General secured the amount, viz: $724.97, in March 1892.

Delinquent specific taxes collected:

International Mining Company	$0.16
Mansfield Iron Mining Company	189.72

SCHEDULE G.

This schedule contains a list of insurance companies whose articles of association or amendments thereto were approved by the Attorney General between July 1, 1891, and July 1, 1892.

Michigan Mutual Fire Insurance Company. Charter approved September 1, 1891.

Shiawassee Mutual Fire Insurance Company. Extension of charter. Approved August 12, 1891.

The Odd Fellows Mutual Benefit Association. Charter approved October 16, 1891.

Central Michigan Mutual Fire Insurance Company. Charter approved September 15, 1891.

Michigan Mutual Life Insurance Company. Amendments approved September 29, 1891.

Farmers' Mutual Fire Insurance Company of Jackson County. Extension of charter. Approved November 27, 1891.

St. Joseph County Village Fire Insurance Company. Amendments approved December 16, 1891.

The St. Joseph County Village Fire Insurance Company. Extension of Charter. Approved December 29, 1891.

Farmers' Mutual Fire Insurance Company of St. Joseph County. Extension of Charter. Approved January 29, 1892.

Farmers' Mutual Fire Insurance Company of Calhoun County. Revised charter approved February 1, 1892.

Farmers' Mutual Fire Insurance Company of Grand Traverse, Antrim, and Leleenau Counties. Amendments approved February 3, 1892.

Masonic Mutual Benefit Association of Western Michigan. Amendments approved February 3, 1892.

Imperial Life Insurance Company of Detroit. Amendments approved February 3, 1892.

Farmers' Mutual Fire Insurance Company of Dowagiac, Cass County. Charter approved March 22, 1892.

Farmers' Mutual Fire Insurance Company of Lenawee County. Extension of charter. Approved March 2, 1892.

Farmers' Mutual Fire Insurance Company of Hillsdale County. Extension of charter. Approved March 22, 1892.

Farmers' Mutual Fire Insurance Company of Lenawee County. Amendments approved April 27, 1892.

The Farmers' Mutual Fire Insurance Company of Ingham County. Extension of charter. Approved March 23, 1892.

The Preferred Masonic Mutual Accident Association of America. Amendment approved April 26, 1892.

Farmers' Mutual Fire Insurance Company of Clinton County. Revised charter. Approved April 30, 1892.

Farmers' Mutual Fire Insurance Company of Clinton County. Extension of charter. Approved April 28, 1892.

The Northwestern Accident Association of the United States. Charter approved May 28, 1892.

The Farmers' Mutual Insurance Company of Kalamazoo County. Extension of charter. Approved June 21, 1892.

The Farmers' Mutual Fire Insurance Company of Calhoun County. Amended articles approved June 24, 1892.

The Farmers' Mutual Fire Insurance Company of Mackinac, Chippewa, and Luce Counties. Charter approved June 30, 1892.

SCHEDULE H.

Total number of prosecutions, 24,537; total number of convictions, 17,489.

Charged with.	No.	Result and Punishment.
Abduction	9	One convicted; 2 acquitted; 2 nolle pross'd; 1 dismissed on examination; 2 pending; 1 complaint withdrawn; 1 sentenced to the State House of Correction at Ionia for 1 year and 6 months.
Abortion	3	Two nolle pross'd; 1 pending.
Absconding from family	2	One convicted; 1 dismissed on payment of costs; 1 sent to the county jail for 20 days.
Adultery	102	Fifteen convicted; 13 acquitted; 9 dismissed on payment of costs; 33 nolle pross'd; 4 dismissed on examination; 17 pending; 10 complaint withdrawn; 1 not sentenced; 1 suspended sentence; 1 county jail 1 year; 1 sent to State Prison at Jackson for 1 year; 1 for 1 year and 6 months; and 2 for 3 years; 1 sentenced to the Detroit House of Correction for 1 year, and 3 for 1 year and 6 months; 1 sentenced to the State House of Correction at Ionia for 1 year, and 1 for 2 years; 1 sent to the State Prison at Marquette for 2 years; 1 warrant not returned; 1 fined $125.
Affray	4	Two convicted; 2 pending, 2 fined $25.
Aiding and assisting prisoners to escape	3	One nolle pross'd; 1 pending; 1 released by order of the Supreme Court.
Arson	58	Seven convicted; 21 acquitted; 8 nolle pross'd; 4 dismissed on examination; 17 pending; 1 awaiting sentence; 1 sentenced to the State Prison at Marquette for 2 years; 2 sentenced to the State Prison at Jackson for 1 year, 1 for 5 years, and 1 for 8 years; 1 sentenced to the county jail for 6 months; 1 sent to the State Reform school.
Assault and battery	2,082	One thousand nine hundred and fifty-five convicted; 586 acquitted; 193 dismissed on payment of costs; 247 nolle prossed; 96 dismissed on examination; 83 pending; 2 not sentenced; 135 suspended sentence; 75 fined costs; 2 fined $50; 161 fined $1; 111 fined $2; 88 fined $3; 36 fined $4; 498 fined $5; 24 fined $6; 12 fined $7; 29 fined $8; 24 fined $9; 236 fined $10; 10 fined $12; 45 fined $15; 38 fined $20; 77 fined $25; 7 fined $30; 5 fined $35; 5 fined $40; 2 fined $45; 22 fined $50; 1 fined $65; 3 fined $75; 1 fined $80; 2 fined $100; 1 sentenced to the county jail 3 days; 12 for 5 days; 24 for 10 days; 22 for 15 days; 19 for 20 days; 60 for 30 days; 5 for 40 days; 1 for 45 days; 24 for 60 days; 18 for 90 days; 1 sentenced to the Reform School; 6 sentenced to the Detroit House of Correction for 30 days; 5 for 60 days; 26 for 65 days; 3 for 70 days; 2 for 75 days; 1 for 85 days; 50 for 90 days; 4 sent to the State House of Correction for 60 days; 6 for 90 days; 1 complaint withdrawn; 4 forfeited bail; 10 gave bonds; 1 sentenced to the State Prison at Marquette for 90 days.
Assault with intent to do great bodily harm less than the crime of murder	184	Fifty-five convicted; 37 acquitted; 3 dismissed on payment of costs; 28 nolle pross'd; 23 dismissed on examination; 38 pending; 2 sent to the county

*There were 4,564 prosecutions and 3,029 convictions in the Police Court of the City of Detroit, but the penalties in such cases were not included in the abstract of the report of the Prosecuting Attorney of that county for the first six months of the fiscal year, hence there is a difference in the total number of prosecutions and convictions in schedule "H" and the total number of prosecutions and convictions above given, equal to the number of prosecutions and convictions in said Police Court not given.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Assault with intent to do great bodily harm less than the crime of murder—*Continued*.....	.....	jail for 5 days; 1 for 15 days; 1 for 40 days; 3 for 60 days; 1 for 75 days; 6 for 90 days; 8 sent to the State House of Correction at Ionia for 3 months; 1 for 4 months; 6 for 1 year; 1 for 1 year and 6 months; 2 for 2 years; 2 for 2 years and 6 months; 1 for 3 years and 6 months; 2 awaiting sentence; 2 warrant not returned; 1 died; 1 sent to the State Prison at Jackson for 1 year; 1 for 3 years; 1 for 3 years and 6 months; 1 for 4 years; 2 for 5 years; 2 for 7 years; 4 sent to the State Prison at Marquette for 1 year; 3 for 2 years; 1 convicted of assault and battery and fined $10; 3 sent to the Detroit House of Correction for 2 years.
Assault with intent to commit rape.....	62	Twenty-two convicted; 7 acquitted; 3 dismissed on payment of costs; 10 nolle prosse'd; 6 dismissed on examination; 14 pending; 1 not sentenced; 1 forfeited bond; 1 fined $5; 2 fined $10; 1 sentenced to the State Prison at Jackson for 1 year and 6 months; 2 for 5 years; 3 for 6 years; 1 for 7 years; 1 for 10 years; 1 sent to the State House of Correction for 1 year and 6 months; 1 for 4 years; 1 for 5 years; 1 sentenced to the State Prison at Marquette for 2 years; 1 sent to the Detroit House of Correction for 90 days; 2 sent to the county jail for 90 days; 2 suspended sentence.
Assault (simple).....	44	Twenty-one convicted; 10 acquitted; 4 dismissed on payment of costs; 7 nolle prosse'd; 1 dismissed on examination; 1 pending; 1 fined $1; 1 fined $3; 9 fined $5; 3 fined $10; 1 fined $40; 2 sentenced to the county jail for 60 days; 2 for 90 days; 1 sentenced to the Detroit House of Correction for 75 days; 1 sent for 90 days.
Assault with intent to murder.....	85	Eighteen convicted; 22 acquitted; 1 dismissed on payment of costs; 17 nolle prosse'd; 4 dismissed on examination; 23 pending; 1 sent to the State House of Correction for 90 days; 1 for 2 years and 6 months; 2 sent to the Detroit House of Correction for 90 days; 1 sentenced to State Prison at Jackson for 4 years and 6 months; 1 for 10 years 1 for 12 years; 1 for 20 years; 1 sentenced to the State Prison at Marquette for 90 days; 4 for 1 year; 1 for 2 years and 6 months; 1 for 5 years; 1 fined $75; 2 convicted of assault and battery and fined $75 and $50 respectively.
Assault with deadly weapon.....	4	One convicted; 3 pending; 1 sentenced to the State House of Correction at Ionia for 10 years.
Assault with intent to maim.....	6	Two convicted; 2 acquitted; 1 dismissed on examination; 1 pending; 1 sentenced to the State Prison for 1 year; 1 sentenced to the State Prison at Marquette for 1 year.
Assault with intent to commit robbery.....	10	Three convicted; 1 acquitted; 1 nolle prosse'd; 1 dismissed on examination; 4 pending; 1 defendant not found; 1 sentenced to the State House of Correction at Ionia for 5 years; 1 for 2 years; 1 sent to the State Reform School at Lansing.
Attempt to commit sodomy.....	3	Two convicted; 1 pending; 1 sentenced to the county jail for 60 days; 1 sentenced to the State Prison at Jackson for 3 years.
Attempt to escape.....	1	One nolle prosse'd.
Attempt to commit larceny.....	7	Two convicted; 2 acquitted; 3 nolle prosse'd; 1 sentenced to the State Prison at Jackson for 2 years; 1 sentenced to the State House of Correction for 2 years.
Attempt to commit murder.....	2	One acquitted; 1 pending.
Attempt to commit burglary.....	14	Seven convicted; 5 acquitted; 2 nolle prosse'd; 1 awaiting sentence; 1 sentenced to the State House of Correction at Ionia for 1 year and 6 months; 2 sentenced to the State Prison at Jackson for 3 years; 1 for five years; 2 sentenced to the Detroit House of Correction for 3 months.

SCHEDULE H.—*Continued.*

Charged with.	No.	Result and Punishment.
Bastardy	171	Forty convicted; 5 acquitted; 23 dismissed on payment of costs; 22 nolle pross'd; 6 dismissed on examination; 51 pending; 25 compromised; 10 gave bonds for support; 23 married complaining witness; 2 forfeited bond; 2 committed to jail in default to give bonds; 1 warrant not served; 1 fined $200.
Being present at theatre on Sunday	21	Three convicted; 2 acquitted; 11 nolle pross'd; 3 pending; 3 sentence pending; 1 settled; 1 fined $5.
Bigamy	19	Eleven convicted; 2 nolle pross'd; 5 pending; 1 suspended sentence; 1 sentenced to the State Prison at Jackson for 6 months; 1 for 2 years and six months; 2 for 3 years; 1 for 4 years; 1 fined costs; 1 fined $5; 2 sentenced to the State House of Correction for 1 year; 1 for 2 years; 1 escaped.
Blasphemy	14	Fourteen convicted; 1 suspended sentence; 1 fined costs; 3 fined $1; 1 fined $3; 1 fined $4; 3 fined $5; 2 fined $25; 1 sentenced to the county jail for 15 days; 1 for 90 days.
Breaking and entering building in night time with felonious intent	49	Twenty-four convicted; 11 acquitted; 11 nolle pross'd; 3 pending; 2 awaiting sentence; 5 suspended sentence; 1 sentenced to the State House of Correction for 4 months; 2 for 2 years; 1 sentenced to the State Prison at Jackson for 3 years; 2 for 4 years; 2 for 4 years and 6 months; 5 for 5 years; 1 sentenced to the Detroit House of Correction for 3 months; 1 for 6 months; 2 for 1 year.
Breaking and entering building in day time with felonious intent	23	Fourteen convicted; 6 acquitted; 2 nolle pross'd; 1 pending; 1 sentence suspended; 2 awaiting sentence; 1 sentenced to the county jail for 90 days; 1 sentenced to the Detroit House of Correction for 6 months; 2 for 1 year and 7 months; 2 for 1 year; 1 sentenced to the State House of Correction for 2 years; 1 sentenced to the State Prison at Marquette for 1 year and six months; 2 sentenced to the State Prison at Jackson for 2 years; 1 for 5 years.
Breaking into railroad car	23	Fifteen convicted; 7 acquitted; 1 pending; 1 awaiting sentence; 5 suspended sentence; 5 sentenced to the county jail for 10 days; 1 for 30 days; 1 sentenced to the Detroit House of Correction for 65 days; 2 sentenced to the State Prison at Jackson for 2 years
Breaking boat fastenings	2	Two convicted; 1 fined $10; 1 sentenced to the county jail for 30 days,
Breaking jail	9	Two convicted; 4 acquitted; 1 dismissed on payment of costs; 2 pending; 2 fined $25.
Breach of the peace	61	Forty-eight convicted; 10 acquitted; 3 dismissed on payment of costs; 6 suspended sentence; 12 gave bonds to keep the peace; 1 fined costs; 2 fined $1; 2 fined $2; 3 fined $3; 4 fined $5; 5 fined $10; 1 sentenced to the county jail for 5 days; 1 for 50 days; 1 for 90 days; 3 sentenced to the Detroit House of Correction for 20 days; 2 for 30 days; 3 for 60 days, 2 for 90 days.
Bribery	1	One pending.
Burglary	219	One hundred and fourteen convicted; 27 acquitted; 22 nolle pross'd; 12 dismissed on examination; 44 pending; 1 escaped; 3 awaiting sentence; 1 suspended sentence; 3 sentenced to the county jail for 60 days; 2 for 90 days; 1 sentenced to the State House of Correction for 4 months; 4 for 6 months; 2 for 8 months; 3 for 1 year; 8 for 2 years; 5 for 1 year and 6 months; 2 for 2 years

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Burglary—*Continued*		and 6 months; 4 for 3 years; 4 for 5 years; 1 for 7 years; 5 sentenced to the State Prison at Jackson for 1 year; 1 for 1 year and 6 months; 6 for 2 years; 2 for 2 years and 6 months; 5 for 3 years; 3 for 3 years and 6 months; 4 for 4 years; 5 for 5 years; 3 for 6 years; 3 for 7 years; 3 for 10 years; 1 for 11 years; 2 for 12 years; 2 sentenced to the Detroit House of Correction for 1 year; 1 sentenced to the State Prison at Marquette for 5 months; 1 for 6 months; 2 for 9 months; 7 for 1 year; 2 for 1 year and 6 months; 1 for 2 years and 6 months; 2 for 3 years; 2 remanded to parents; 7 sentenced to the State Reform School at Lansing.
Buying property of minors under the age of 16 years	7	Six convicted; 1 acquitted; 3 fined $5; 1 fined $6; 2 fined $10.
Careless use of fire-arms	20	Twelve convicted; 4 acquitted; 2 nolle pross'd; 2 pending; 4 fined $5; 1 fined $10; 1 fined $15; 1 fined $20; 1 fined $30; 1 sentenced to the county jail for 7 days; 1 for 20 days; 1 for 30 days; 1 for 90 days.
Carnal knowledge of girl between 14 and 16 years of age	5	One convicted; 1 dismissed on payment of costs; 2 nolle pross'd; 1 pending; 1 sentenced to the State Prison at Jackson for 5 years.
Carrying concealed weapons	112	Ninety-two convicted; 6 acquitted; 5 dismissed on payment of costs; 5 nolle pross'd; 4 pending; 1 gave bonds; 7 suspended sentence; 3 fined $1; 5 fined $2; 2 fined $3; 1 fined $4; 19 fined $5; 1 fined $6; 11 fined $10; 2 fined $15; 3 fined $20; 1 fined $19, 5 fined $25; 5 sentenced to the county jail for 5 days; 4 for 10 days; 1 for 15 days; 2 for 20 days; 7 for 30 days; 1 for 40 days; 2 for 60 days; 1 for 90 days; 2 sentenced to the Detroit House of Correction for 30 days; 4 for 90 days; 1 sentenced to the State House of Correction at Ionia for 90 days; 1 sent to the Insane Asylum at Pontiac.
Conspiracy	34	Two convicted; 1 acquitted; 13 dismissed on examination; 3 pending; 15 discharged on unconstitutionality of the statute; 1 sentenced to the State House of Correction at Ionia for 1 year and 3 months; 1 for 1 year and 7 months.
Concealing offences	2	One convicted; 1 sentenced to the county jail for 30 days.
Concealing birth of bastard child	2	One convicted; 1 suspended sentence; 1 forfeited recognizance.
ontempt of court	2	One convicted; 1 pending; 1 sentenced to the county jail for 5 days.
Counterfeiting	1	One dismissed on payment of costs.
Cruelty to animals	121	Sixty-two convicted; 24 acquitted; 20 dismissed on payment of costs; 4 nolle pross'd; 10 pending; 1 compromised; 1 suspended sentence; 1 fined costs; 2 fined $1; 4 fined $2; 8 fined $3; 1 fined $4; 15 fined $5; 10 fined $10; 2 fined $15; 1 fined $20; 4 fined $25; 1 fined $48; 2 fined $50; 1 fined $75; 2 sentenced to the county jail for 30 days; 3 for 60 days; 2 sentenced to the Detroit House of Correction for 65 days; 1 for 90 days; 1 remanded to parents.
Defrauding hotel keeper	75	Thirty-seven convicted; 4 acquitted; 19 discharged on payment of costs; 7 nolle pross'd; 6 pending; 1 suspended sentence; 2 settled; 2 fined costs; 1 fined $1; 3 fined $5; 5 fined $10; 1 fined $20; 1 fined $27; 1 fined $40; 1 fined $60; 1 sentenced to the county jail for 5 days; 3 for 10 days; 1 for 20 days; 1 for 25 days; 9 for 30 days; 1 for 60 days; 3 sentenced to the Detroit House of Correction for 30 days; 1 for 40 days; 1 for 60 days.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Desecrating tomb	1	One convicted; 1 fined $300.
Disposing of chattel-mortgaged property with intent to defraud	32	One convicted; 9 acquitted; 4 dismissed on payment of costs; 6 nolle pross'd; 11 pending; 1 warrant not returned; 1 fined $25.
Disturbing public meeting	29	Twenty-five convicted; 1 acquitted; 3 nolle pross'd; 3 suspended sentence; 17 fined $1; 2 fined $2; 3 fined $5.
Disturbing religious meeting	93	Eighty-two convicted; 1 acquitted; 8 dismissed on payment of costs; 5 nolle pross'd; 2 pending; 9 suspended sentence; 1 discharged without sentence; 1 fined costs; 7 fined $1; 18 fined $2; 1 fined $3; 25 fined $5; 1 fined $8; 6 fined $10; 1 fined $20; 1 fined $25; 1 fined $30; 2 sentenced to the county jail for 10 days; 2 for 15 days; 2 for 20 days; 3 for 30 days; 1 for 60 days.
Disturbance on railroad train	2	Two convicted; 1 sentenced to the county jail for 30 days; 1 sentenced to the Detroit House of Correction for 90 days.
Disorderly	8,907	
Classified as follows:		
(*a*) Common prostitutes	159	One hundred and twenty-seven convicted; 9 acquitted; 7 dismissed on payment of costs; 15 nolle pross'd; 1 pending; 1 fined costs; 1 fined $1; 2 fined $2; 4 fined $3; 15 fined $5; 58 fined $10; 12 fined $15; 8 fined $25; 3 fined $30; 3 fined $50; 3 sentenced to the county jail for 10 days; 2 for 20 days; 1 for 25 days; 13 for 30 days; 1 for 45 days; 3 sentenced to the Detroit House of Correction for 65 days; 1 for 90 days; 1 sent to the Industrial Home for Girls at Adrian.
(*b*) Drunks	3,797	Three thousand six hundred and eighty-six convicted; 48 acquitted; 26 dismissed on payment of costs; 19 nolle pross'd; 16 dismissed on examination; 2 pending; 1 gave bonds; 277 fined costs; 401 fined $1; 92 fined $2; 93 fined $3; 29 fined $4; 420 fined $5; 7 fined $6; 10 fined $7; 4 fined $8; 181 fined $10; 5 fined $12; 12 fined $15; 4 fined $18; 25 fined $20; 3 fined $25; 14 sentenced to the county jail for 1 day; 23 for 2 days; 82 for 3 days; 5 for 4 days; 202 for 5 days; 28 for 7 days; 478 for 10 days; 325 for 15 days; 234 for 20 days; 7 for 25 days; 269 for 30 days; 1 for 35 days; 1 for 40 days; 6 for 60 days; 1 for 65 days; 2 for 90 days; 6 sentenced to the Detroit House of Correction for 60 days; 3 for 65 days; 17 for 90 days; 7 sentenced to the State Prison at Marquette for 30 days; 4 for 60 days; 5 for 90 days; 1 sent to the State Reform School at Lansing; 401 suspended sentence.
(*d*) Drunk and disorderly	1,214	Eleven hundred and sixty-seven convicted; 12 acquitted; 22 dismissed on payment of costs; 10 nolle pross'd; 8 dismissed on examination; 12 discharged without sentence; 163 suspended sentence; 1 gave bonds for good behavior; 183 fined costs; 58 fined $1; 20 fined $2; 3 fined $3; 2 fined $4; 157 fined $5; 1 fined $6; 7 fined $7; 184 fined $10; 35 fined $15; 13 fined $20; 1 fined $25; 4 fined $30; 4 fined $50; 1 sentenced to the county jail for 3 days; 4 for 5 days; 5 for 7 days; 164 for 10 days; 31 for 15 days; 52 for 20 days; 77 for 30 days; 3 for 45 days; 4 for 60 days; 4 for 90 days; 8 sentenced to the Detroit House of Correction for 65 days; 11 for 90 days; 4 sentenced to the State House of Correction for 60 days; 1 sent to the State Reform School at Lansing.
(*e*) Gamesters and keepers of gaming rooms	55	Thirty-two convicted; 2 acquitted; 1 dismissed on payment of costs; 6 nolle pross'd; 1 dismissed on examination, 12 pending; 2 fined costs; 2 fined $1; 1 fined $2; 7 fined $3; 1 fined $5; 14 fined $7; 3 fined 10; 1 fined $25; 1 fined $50; 1 forfeited recognizance.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
(*f*) Non-support of family	86	Thirty-eight convicted; 10 acquitted; 15 dismissed on payment of costs; 10 nolle pros'd; 3 dismissed on examination; 8 pending; 4 gave bonds; 8 suspended sentence; 1 sentenced to the county jail for 20 days; 7 for 30 days; 3 for 60 days; 4 sentenced to the Detroit House of Correction for 90 days; 3 fined $5; 7 fined $10; 1 fined $50; 2 complaint withdrawn.
(*g*) Unclassified	1,801	One thousand four hundred and eighty-eight convicted; 163 acquitted; 63 dismissed on payment of costs; 73 nolle pross'd; 10 dismissed on examination; 4 pending; 198 suspended sentence; 59 fined costs; 60 fined $1; 8 fined $2; 8 fined $3; 107 fined $5; 2 fined $6; 65 fined 10; 8 fined $15; 55 fined $20; 22 fined $25; 1 fined $30; 4 fined $50; 1 fined $60; 1 fined $100; 5 sentenced to the county jail for 1 day; 33 for 2 days; 41 for 3 days; 21 for 4 days; 179 for 5 days; 15 for 6 days; 17 for 8 days; 164 for 10 days; 33 for 15 days; 102 for 20 days; 1 for 25 days; 66 for 30 days; 1 for 40 days; 1 for 45 days; 12 for 60 days; 1 for 70 days; 12 for 90 days; 43 sentenced to the Detroit House of Correction for 30 days; 27 for 60 days; 17 for 65 days; 4 for 75 days; 1 for 85 days; 47 for 90 days; 1 for 2 years; 18 sentenced to the State Prison at Marquette for 30 days; 1 for 60 days; 6 for 90 days; 3 sent to the State Reform School at Lansing; 9 sent to the Industrial Home for Girls at Adrian; 1 remanded to parents; 5 gave bonds; 2 sentenced to the State House of Correction at Ionia for 14 days; 2 (first offense) released; 2 forfeited bail.
(*h*) Vagrants	1,168	One thousand two hundred and ninety-four convicted; 119 acquitted; 53 dismissed on payment of costs; 98 nolle pross'd; 104 dismissed on examination; 144 suspended sentence; 2 fined $3; 63 fined $5; 106 fined $10; 89 fined $15; 7 fined $25; 1 fined $30; 6 fined $40; 5 fined $50; 1 sentenced to the county jail for 1 day; 4 for 3 days; 2 for 4 days; 92 for 5 days; 8 for 8 days; 230 for 10 days; 225 for 15 days; 115 for 20 days; 3 for 25 days; 98 for 30 days; 1 for 40 days; 2 for 45 days; 6 for 60 days; 3 for 90 days; 2 sentenced to the State House of Correction at Ionia for 60 days; 1 for 65 days, 8 for 90 days; 10 for 4 months; 4 for 5 months; 3 for 6 months; 5 sentenced to the Detroit House of Correction for 60 days; 16 for 65 days; 1 for 70 days; 15 for 90 days; 1 for 6 months; 6 sentenced to the State Prison at Marquette for 30 days; 2 for 45 days; 5 for 90 days; 1 sent to the Industrial Home for Girls at Adrian; 2 sent to the State Reform School at Lansing.
(*i*) Drunkards and tipplers	127	One hundred and twelve convicted; 1 acquitted; 6 dismissed on payment of costs; 7 nolle pross'd; 1 dismissed on examination; 9 suspended sentence; 1 fined costs; 1 fined $3; 13 fined $5; 18 fined $10; 2 fined $15; 1 fined $20; 2 fined $25; 3 sentenced to the county jail for 5 days; 12 for 10 days; 5 for 15 days; 7 for 20 days; 9 for 30 days; 2 for 45 days; 2 for 60 days; 1 sentenced to the Detroit House of Correction for 60 days; 8 sentenced for 65 days; 1 for 70 days; 7 for 90 days; 3 sentenced to the State Prison at Marquette for 90 days; 3 gave bonds; 1 sentenced to the State House of Correction at Ionia for 6 months.
Embezzlement	104	Seventeen convicted; 23 acquitted; 12 dismissed on payment of costs; 15 nolle pross'd; 5 dismissed on examination; 30 pending; 2 suspended sentence; 1 settled; 1 fined $5; 2 fined $10; 1 fined $25; 2 fined $50; 1 fined $75; 1 sentenced to the State Prison at Marquette for 6 months; 1 sentenced to the county jail for 40 days; 1 sent to the Reform School at Lansing; 1 sentenced to the State Prison at Jackson for 4 months; 2 for 2 years; 1 sentenced to the State House of Correction at Ionia for 3 years; 1 warrant not returned; 1 sentenced to the Detroit House of Correction for 1 year.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Entering building without breaking	2	One convicted; 1 pending; 1 awaiting sentence.
Enticing female to enter house of ill-fame	7	Three acquitted; 3 nolle pross'd; 1 pending.
Enticing child away under 16 years of age	3	Three nolle pross'd.
Escape	1	One convicted; 1 suspended sentence.
Exposing poisonous substances	1	One dismissed on examination.
Extortion	1	One nolle pross'd.
False accusing of crime	1	One convicted; 1 sentenced to the county jail for 20 days.
False imprisonment	1	One nolle pross'd.
False pretenses	124	Twenty-two convicted; 14 acquitted; 11 dismissed on payment of costs; 34 nolle pross'd; 4 dismissed on examination; 34 pending; 5 suspended sentence; 1 escaped; 5 forfeited bail; 2 sentenced to the Detroit House of Correction for 90 days; 1 for 9 months; 3 for 1 year; 1 sentenced to State Prison at Jackson for 3 months; 2 for 1 year and 6 months; 1 for 2 years and 6 months; 1 for 4 years; 2 for 10 years; 1 fined costs; 1 sentenced to the State House of Correction at Ionia for 1 year; 1 sentenced to Marquette for 9 months.
Forgery	74	Thirty-nine convicted; 6 acquitted; 1 dismissed on payment of costs; 7 nolle pross'd; 21 pending; 5 suspended sentence; 3 awaiting sentence; 1 gave bonds; 1 sentenced to the Reform School at Lansing; 5 sentenced to the State House of Correction at Ionia for 1 year; 4 sent for 2 years; 2 for 2 years and 6 months; 1 for 3 years; 1 for 5 years; 1 for 7 years; 1 sentenced to the State Prison at Jackson for 9 months; 1 for 1 year; 2 for 2 years; 1 for 2 years and 6 months; 1 for 3 years; 1 for 4 years; 2 for 7 years; 1 for 10 years; 1 for 11 years; 1 sentenced to the Detroit House of Correction for 3 years; 1 complaint withdrawn; 1 fined $300; 1 fined $800.
Fraudulent disposing of personal property under contract of purchase	3	One convicted; 2 acquitted; 1 fined 4.
Frequenting bawdy house	15	Fifteen convicted; 2 fined 1; 1 fined $3; 9 fined $5; 3 fined $10.
Imputing to female want of chastity	1	One convicted; 1 fined $5.
Incest	9	Four convicted; 1 acquitted; 4 pending; 1 sentenced to the State House of Correction at Ionia for 1 year; 1 sentenced to the State Prison at Jackson for 4 years; 1 for 10 years; 1 sentenced to the State Prison at Marquette for 10 years.
Incestuous marriage	1	One convicted; 1 sentenced to the State Prison at Jackson for 10 years.
Indecent liberty with girl under 16 years of age	11	Five convicted; 2 acquitted; 2 nolle pross'd; 1 dismissed on examination; 1 pending; 1 sentenced to the county jail for 90 days; 1 sentenced to the State Prison at Jackson for 6 months; 1 for 1 year; 1 for 4 years; 1 sentenced to the State Prison at Marquette for 4 years.
Indecent exposure of person	47	Fourteen convicted; 12 acquitted; 2 dismissed on payment of costs; 5 nolle pross'd; 6 dismissed on examination; 8 pending; 1 suspended sentence; 2 fined $1; 1 fined $4.50; 2 fined $5; 1 sentenced to the county jail for 5 days; 1 for 60 days; 1 sentenced to the Detroit House of Correction for 60 days; 1 for 6 months; 2 sentenced to the State House of Correction at Ionia for 1 year; 1 sentenced to the State Prison at Jackson for 1 year; 1 sent to the Reform School at Lansing.
Infanticide	1	One dismissed on examination.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and Punishment.
Jumping on moving train	52	Fifty-two convicted; 16 suspended sentence; 3 fined $1; 1 fined $3; 8 fined $5; 2 sentenced to the county jail for 5 days; 2 for 10 days; 1 for 20 days; 11 sentenced to the Detroit House of Correction for 30 days; 8 for 60 days.
Keeping bawdy house	15	Eight convicted; 1 acquitted; 2 dismissed on payment of costs; 3 nolle pross'd; 1 pending; 1 fined $5; 2 fined $10; 2 fined $20; 1 fined $25; 1 fined $40; 1 fined $50.
Keeping house of ill-fame	84	Twenty-nine convicted; 7 acquitted; 8 nolle pross'd; 6 dismissed on examination; 29 pending; 3 forfeited bond; 4 suspended sentence; 2 sentenced to the State Prison for 1 year; 1 for 2 years and 8 months; 3 sentenced to the Detroit House of Correction for 1 year; 1 sentenced to the State Prison at Marquette for 3 months; 6 sentenced to the county jail for 30 days; 1 fined $5; 4 fined $10; 3 fined $15; 1 fined $25; 1 fined $100; 1 complaint withdrawn.
Keeping store open on Sunday	4	Four pending.
Keeping barber shop open on Sunday	1	One acquitted.
Kidnapping	1	One nolle pross'd.
Larceny	2,387	
Classified as follows:		
From the person	75	Thirty-three convicted; 18 acquitted; 2 dismissed on payment of costs; 4 nolle pross'd; 1 dismissed on examination; 16 pending; 1 escaped; 4 sentenced to the State House of Correction for 90 days; 1 for 6 months; 1 for 1 year; 1 for 2 years; 1 for 1 year and 6 months; 4 sentenced to the State Prison at Jackson for 1 year; 1 for 1 year and 3 months; 3 for 2 years; 1 for 2 years and 6 months; 6 for 3 years; 2 for 4 years; 1 for 4 years and 6 months; 1 for 5 years; 3 sentenced to the Detroit House of Correction for 3 months; 1 for 9 months; 1 sentenced to the State Prison at Marquette for 1 year; 1 for 2 years.
From building in day time	108	Fifty-four convicted; 16 acquitted; 4 discharged on payment of costs; 12 nolle pross'd; 22 pending; 1 awaiting sentence; 1 escaped; 2 suspended sentence; 4 sentenced to the county jail for 60 days; 2 for 90 days; 1 sentenced to the State House of Correction for 3 months; 2 for 6 months; 1 for 9 months; 2 for 1 year; 2 for 1 year and 3 months; 4 for 1 year and 6 months; 8 for 2 years; 1 for 2 years and 6 months; 1 for 3 years; 2 sent to the Reform School at Lansing; 1 sentenced to the State Prison at Jackson for 6 months; 1 for 9 months; 1 for 1 year and 3 months; 3 for 1 year and 6 months; 2 for 2 years; 2 for 2 years and 6 months; 2 for 3 years; 1 for 3 years and 9 months; 1 for 4 years; 2 for 5 years; 1 for 3 years and 6 months; 2 sentenced to the Detroit House of Correction for 1 year; 1 for 1 year and 9 months.
From a railroad car	4	Two convicted; 1 nolle pross'd; 1 pending; 1 sentenced to the State House of Correction for 1 year; 1 sent to State Prison at Jackson for 2 years and 6 months.
Of horse	9	Four convicted; 2 acquitted; 1 nolle pross'd; 2 pending; 1 sentenced under the indeterminate law to State Prison at Marquette for from 2 to 5 years; 1 sentenced to the State Prison at Jackson for 5 years; 1 sentenced to the State House of Correction for 3 years; 1 for 7 years.
Of less than $25	975	Six hundred and ninety-five convicted; 129 acquitted; 28 dismissed on payment of costs; 84 nolle pross'd; 21 discharged on examination; 17 pending; 2 awaiting sentence; 147 suspended sentence; 3 fined costs; 17 fined $1; 13 fined $2; 12 fined $3;

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Of less than $25—*Continued*		7 fined $4; 105 fined $5; 5 fined $6; 11 fined $7; 6 fined $8; 19 fined $10; 4 fined $15; 5 fined $20; 19 fined $25; 1 fined $30; 2 fined $35; 1 fined $50; 4 sentenced to the county jail for 5 days; 1 for 6 days; 22 for 10 days; 14 for 15 days; 15 for 20 days; 2 for 25 days; 69 for 30 days; 1 for 45 days; 7 for 40 days; 1 for 50 days; 21 for 60 days; 6 for 90 days; 36 sentenced to the Detroit House of Correction for 30 days; 17 for 60 days; 6 for 65 days; 60 for 90 days; 1 sentenced to the State House of Correction for 90 days; 1 sent for 6 months; 25 sent to the State Reform School at Lansing; 4 sent to the Industrial Home for Girls at Adrian; 1 sentenced to the State Prison at Marquette for 90 days; 1 warrant not returned; 2 forfeited bail.
Of more than $25	130	Sixty-two convicted: 16 acquitted; 17 nolle pross'd; 4 dismissed on examination; 31 pending; 7 suspended sentence; 3 sentenced to the county jail for 30 days; 3 for 60 days; 3 for 90 days; 4 for 6 months; 2 sentenced to the State Prison at Jackson for 6 months; 1 for 1 year; 1 for 1 year and 6 months; 3 for 2 years; 2 for 2 years and 6 months; 3 for 3 years; 1 for 4 years; 4 for 5 years; 2 for 4 years and 6 months; 1 sentenced to the State House of Correction at Ionia for 6 months; 1 for 1 year; 1 for 1 year and 6 months; 4 for 2 years; 1 for 3 years; 1 for 4 years; 1 convicted of simple larceny and fined $75; 1 sentenced to the Detroit House of Correction for 90 days; 4 for 1 year; 1 for 2 years; 1 for 3 years; 2 sentenced to the State Prison at Marquette for 1 year; 1 for 1 year and 3 months; 1 for 2 years; 1 for 3 years; 1 sent to the Industrial Home for Girls at Adrian.
Of timber	8	One convicted; 1 acquitted; 3 dismissed on payment of costs; 2 nolle pross'd; 1 pending; 1 sentenced to the county jail for 60 days.
Unclassified	1,078	Six hundred and thirty-one convicted; 128 acquitted; 72 dismissed on payment of costs; 115 nolle pross'd; 37 dismissed on examination; 82 pending; 1 escaped; 9 warrant not returned; 1 discharged by the court after conviction; 4 bail forfeited; 11 remanded to parents; 37 suspended sentence; 4 fined costs; 13 fined $1; 10 fine $2; 8 fined $3; 52 fined $5; 6 fined $6; 1 fined $8; 41 fined $10; 26 fined $15; 18 fined $20; 20 fined $25; 6 fined $30; 3 fined $50; 2 fined $100; 3 sentenced to the county jail for 5 days; 17 for 10 days; 9 for 15 days; 12 for 20 days; 3 for 25 days; 58 for 30 days; 1 for 35 days; 6 for 40 days; 2 for 45 days; 1 for 50 days; 18 for 60 days; 17 for 90 days; 8 sentenced to the Detroit House of Correction for 60 days; 14 for 65 days; 2 for 75 days; 60 for 90 days; 2 for 6 months; 3 for 1 year; 1 for 3 years; 1 sentenced to the State House of Correction at Ionia for 15 days; 3 for 30 days; 5 for 60 days; 31 for 90 days; 8 for 4 months; 1 for 6 months; 2 for 8 months; 6 for 1 year; 3 for 2 years; 6 for 3 years; 1 sentenced to the State Prison at Jackson for 9 months; 2 for 1 year; 1 for 1 year and 6 months; 7 for 2 years; 4 for 3 years; 1 for 4 years; 8 for 5 years; 4 sentenced to the State Prison at Marquette for 90 days; 1 for 6 months; 1 for 2 years; 1 for 3 years; 1 for 3 years and 9 months; 83 sent to the Reform School at Lansing; 5 sent to the Industrial Home for Girls.
Leaving dead animals unburied	1	One convicted; 1 fined $5.
Lewd and lascivious cohabitation	30	Seven convicted; 4 acquitted; 11 nolle pross'd; 4 dismissed on examination; 4 pending; 1 not sentenced; 2 suspended sentence; 1 sentenced to the county jail for 60 days; 2 for one year; 1 sentenced to the State House of Correction at Ionia for 60 days.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Libel	8	One convicted; 1 acquitted; 2 nolle pross'd; 2 dismissed on examination; 2 pending; 1 fined $25.
Maintaining nuisance	12	Six convicted; 2 acquitted; 4 pending; 1 fined costs; 1 fined $3; 4 fined $5.
Malicious injury to property	318	One hundred and eighty-two convicted; 40 acquitted; 27 dismissed on payment of costs; 24 nolle pross'd; 9 dismissed on examination; 21 pending; 5 settled; 7 suspended sentence on payment of costs; 23 suspended sentence; 6 fined costs; 13 fined $1; 5 fined $2; 4 fined $3; 1 fined $4; 34 fined $5; 2 fined $7; 19 fined $10; 1 fined $12; 1 fined $15; 3 fined $20; 5 fined $25; 1 fined $40; 3 fined $50; 1 fined $60; 1 sentenced to the State House of Correction for 15 days; 1 for 60 days; 1 for 90 days; 1 for 1 year; 2 for 3 years; 8 sentenced to the county jail for 10 days; 2 for 15 days; 2 for 20 days; 4 for 30 days; 3 for 40 days; 1 for 45 days; 5 for 60 days; 1 for 75 days; 7 for 90 days; 3 sentenced to the Detroit House of Correction for 30 days; 3 for 60 days; 7 sentenced to the Reform School; 1 to Insane Asylum.
Malicious killing of animal	7	One convicted; 3 acquitted; 3 nolle pross'd; 1 awaiting sentence.
Malicious mischief	3	Two nolle pross'd; 1 pending.
Malicious threats	81	Thirty-six convicted; 23 acquitted; 5 dismissed on payment of costs; 9 nolle pross'd, 4 dismissed on examination; 3 pending; 22 gave bonds to keep the peace; 7 sentence suspended; 1 fined costs; 1 fined $4; 2 fined $5; 1 fined $15; 1 fined $50; 1 sentenced to the Detroit House of Correction for 30 days; 1 insane.
Manslaughter	8	Four convicted; 2 acquitted; 1 dismissed on examination; 1 pending; 1 sentenced to the State Prison at Marquette for 90 days; 1 for 9 months; 1 for 13 years; 1 for 14 years.
Mayhem	7	Three convicted; 1 acquitted; 2 nolle pross'd; 1 pending; 1 sentenced to the State House of Correction at Ionia for 90 days; 1 for 1 year; 1 fined $45.
Mingling poison with drink	1	One acquitted.
Molesting laborers	2	Two dismissed on payment of costs.
Murder	70	Seventeen convicted; 9 acquitted; 2 nolle pross'd; 3 dismissed on examination; 38 pending; 1 warrant not returned; 1 sentenced to the State Prison at Jackson for 3 years; 3 for 10 years; 1 for 15 years; 1 for 18 years; 3 for 20 years; 1 for 22 years; 3 for life; 1 sentenced to the State Prison at Marquette for 5 years; 1 for 10 years; 1 for 15 years; 1 for 25 years; 1 sentenced to the Insane Asylum at Ionia.
Obstructing gravel road	1	One dismissed on payment of costs.
Obstructing railroad track	5	One acquitted; 1 nolle pross'd; 1 dismissed on examination; 2 pending.
Peddling without license	4	Two convicted; 1 acquitted; 1 pending; 1 fined $10; 1 fined $50.
Perjury	31	Three convicted; 3 acquitted; 1 dismissed on payment of costs; 7 nolle pross'd; 3 dismissed on examination; 11 pending; 1 forfeited bond; 3 information quashed; 1 sent to the Industrial Home for Girls; 1 sentenced to the State Prison at Jackson for 10 years.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Pointing fire-arms at another	2	Two convicted; 1 fined $22; 1 fined $25.
Personating another	2	Two convicted; 1 sentenced to the Detroit House of Correction for 20 days; 1 for 60 days.
Personating an officer	1	One pending.
Poisoning well	1	One dismissed on examination.
Possession of burglar's tools with intent to commit	6	Four convicted; 1 pending; 1 escaped; 1 sentenced to the State Prison at Jackson for 3 years; 2 for 8 years; 1 sentenced to the State Prison at Marquette for 7 years.
Prize fighting	7	Six nolle pross'd; 1 dismissed on examination.
Rape	73	Eighteen convicted; 9 acquitted; 1 dismissed on payment of costs; 13 nolle pross'd; 8 dismissed on examination; 23 pending; 1 fined $250; 1 sentenced to the State Prison at Jackson for 2 years; 1 for 4 years and six months; 3 for 5 years; 1 for 6 years; 1 for 8 years; 5 for 10 years; 1 for 15 years; 1 for 20 years; 1 for 30 years; 1 sentenced to the State House of Correction for 3 years; 1 for 5 years; 1 committed suicide pending examination.
Subornation of perjury	2	Two pending.
Receiving stolen property	42	Sixteen convicted; 6 acquitted; 1 dismissed on payment of costs; 6 nolle pross'd; 13 pending; 1 sentence suspended; 2 fined $30; 1 sent to the State House of Correction at Ionia for 3 months; 3 sent to the Detroit House of Correction for 6 months; 1 sent for 9 months; 1 sent for 1 year; 1 sent to the State Prison at Jackson for 9 months; 2 sent for 1 year; 2 sent for 5 years; 1 sent to the Industrial Home for Girls at Adrian; 1 sent to the State Prison at Marquette for 18 months.
Refusing to make sworn statement of taxable property	1	One pending.
Refusing to assist an officer	2	One convicted; 1 discharged on examination; 1 sent to the county jail for 30 days.
Resisting an officer	53	Nine convicted; 3 acquitted; 8 discharged on payment of costs; 3 discharged on examination; 6 nolle pross'd; 24 pending; 1 fined $10; 1 fined $20; 1 fined 75; 1 fined $50; 1 fined $150; 1 sent to the county jail for 90 days; 1 sent to the State Prison at Jackson for 6 months; 1 sent for 1 year and 6 months; 1 sent to State House of Correction at Ionia for 90 days.
Riot	5	Five convicted; 5 fined $1.
Robbery	71	Twenty-seven convicted; 14 acquitted; 1 discharged on payment of costs; 10 nolle pross'd; 1 discharged on examination; 18 pending; 3 fined $25; 1 sent to county jail for 60 days; 1 sent to State House of Correction for 3 years; 2 sent for 7 years; 1 sent for 20 years; 1 sent to Detroit House of Correction for 90 days; 3 sent for 1 year; 2 sent to State Prison at Jackson for 1 year; 1 sent for 2 years; 2 sent for 3 years; 1 sent for 4 years and 6 months; 1 sent for 5 years; 2 sent for 6 years; 2 sent for 7 years; 1 sent for 15 years; 1 sent for 26 years; 1 sent for 20 years; 1 sent to State Prison at Marquette for 2 years.
Search warrant	37	Two acquitted; 6 pending; 1 complaint for larceny filed; 13 goods not found; 12 goods found; 1 part of goods found; 2 warrants not returned.
Seduction	24	One convicted; 3 acquitted; 2 discharged on payment of costs; 6 nolle pross'd; 6 pending; 6 married girl; 1 settled.
Selling adulterated butter	1	One acquitted.
Selling diseased meat	2	Two discharged.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
Selling diseased animal	4	One acquitted; 3 nolle pross'd.
Selling adulterated milk	1	One convicted; 1 fined $10.
Sending obsene letter	2	One convicted; 1 sent to Detroit House of Correction for 90 days.
Selling obscene pictures	3	Three convicted; 1 fined $5; 1 fined $20; I sent to the Detroit House of Correction for 90 days.
Slander	221	One hundred six convicted; 70 acquitted; 10 dismissed on payment of costs; 25 nolle pross'd; 6 dismissed on examination; 4 pending; 1 compromised; 11 sentence suspended; 2 fined costs; 14 fined $1; 4 fined $2; 1 fined $3; 22 fined $5; 4 fined $8; 20 fined $10; 2 fined $12; 2 fined $15; 6 fined $20; 1 fined $80; 2 fined $100; 1 fined $100 and 90 days in the Detroit House of Correction; 2 sent to the county jail for 10 days; 1 sent for 20 days; 1 sent for 60 days; 3 sent to the Detroit House of Correction for 20 days; 3 sent for 30 days; 1 sent for 65 days; 2 sent for 90 days.
Sodomy	7	Three convicted; 1 acquitted; 2 nolle pross'd; 1 pending; 1 sent to the State Prison at Jackson 1 year; 1 sent for 5 years; 1 sent for 10 years.
Spiking saw-log	1	One pending.
Stealing ride on freight train	19	Sixteen convicted; 3 nolle pross'd; 3 sent to the county jail for 1 day; 2 sent for 5 days; 6 sent for 15 days; 2 sent for 20 days; 3 sent for 30 days.
Suppression of evidence	1	One acquitted.
Surety to keep the peace	66	Thirty-six convicted: 9 acquitted; 4 dismissed on payment of costs; 10 nolle pross'd; 1 dismissed on examination; 5 pending; 31 gave bonds; 1 complaint was withdrawn; 2 sent to the county jail for 30 days; 1 sent for 90 days; 1 suspended sentence.
Throwing stones at passenger coach	2	One acquitted; 1 nolle pross'd.
Truancy	190	One hundred fifty-six convicted; 4 acquitted; 6 dismissed on payment of costs; 17 nolle pross'd; 2 dismissed on examination; 5 pending; 38 sentence suspended; 78 sent to Reform School; 29 sent to Industrial Home for Girls at Adrian; 9 remanded to parents; 4 bound out by county agents; 1 fined $5.
Unhitching and driving away horse without consent of owner	16	Thirteen convicted; 1 acquitted; 1 dismissed on payment of costs; 1 settled; 1 fined $2; 2 fined $5; 1 sent to the county jail for 20 days; 2 sent for 30 days; 1 sent for 60 days; 2 sent to the Detroit House of Correction for 45 days; 2 sent for 60 days; 1 sent for 90 days; 1 sent to the Reform School.
Unlawfully retaining public papers	2	One convicted; 1 pending; 1 fined $10.
Unlawful practice of medicine	3	Two convicted; 1 nolle pross'd; 1 fined $5; 1 fined $10.
Use of oleomargarine in public institutions	1	One nolle pross'd.
Use of illuminating oil before inspection	5	Four convicted; 1 pending; 4 fined $1.
Violation of county sidewalk law	1	One nolle pross'd.
Violation of election law	3	Three pending.
Violation of the game law	115	
Classified as follows:		
(a) Killing deer out of season	19	Seventeen convicted; 1 acquitted; 1 dismissed on payment of costs; 2 fined $3; 1 fined 5; 2 fined $10; 1 fined $25; 9 fined $50; 2 sent to the county jail for 30 days.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and pnnishment.
(*b*) Killing fish	25	Fifteen convicted; 8 acquitted; 1 dismissed on payment of costs; 1 nolle pross'd; 1 sentence suspended; 1 fined $1; 6 fined $5; 3 fined $10; 4 fined $15.
(*c*) Unclassified	71	Forty-sight convicted; 9 acquitted; 3 dismissed on payment of costs; 2 nolle pross'd; 4 dismissed on examination; 5 pending; 3 sentence suspended; 6 fined costs; 1 fined $1; 13 fined $5; 3 fined $10; 4 fined $15; 1 fined $20; 6 fined $25; 10 fined $50; 1 fined $75.
Violation of health law	4	Four convicted; 1 fined $10; 3 sent to the county jail for 5 days.
Violation of insurance law	9	Two nolle pross'd; 7 pending.
Violation of liquor law	2,524	
Classified as follows:		
(*a*) Bar obstructions	92	Thirty-one convicted; 41 acquitted; 10 dismissed on payment of costs; 3 nolle pross'd; 7 pending; 11 fined $5; 5 fined $10; 4 fined $25.
(*b*) Keeping open on holidays	144	Eighty-four convicted; 22 acquitted; 12 dismissed on payment of costs; 11 nolle pross'd; 14 pending; 16 fined $25; 12 fined $30; 47 fined $40; 6 fined $50; 1 fined $100; 1 fined $80; 1 forfeited bail.
(*c*) Keeping open on election day	27	Eleven convicted; 11 acquitted; 2 nolle pross'd; 3 pending; 1 fined $10; 6 fined $25; 2 fined $50; 2 fined $100.
(*d*) Keeping saloon open on Sunday	197	Sixty convicted; 58 acquitted; 23 discharged on payment of costs; 25 nolle pross'd; 1 dismissed on examination; 30 pending; 1 suspended sentence; 4 sentence pending; 4 fined $10; 6 fined $15; 17 fined $25; 15 fined $50; 1 fined $75; 5 fined $100; 2 fined $40; 3 fined $150; 1 fined $200; 1 sent to the county jail for 90 days.
(*e*) Keeping saloon open after hours	130	Fifty-seven convicted; 19 acquitted; 16 dismissed on payment of costs; 17 nolle pross'd; 17 dismissed on examination; 6 pending; 11 fined $15; 15 fined $25; 25 fined $28; 3 fined $40; 1 fined $50; 2 fined $75.
(*f*) Selling to minor	104	Thirty-seven convicted; 16 acquitted; 17 discharged on payment of costs; 17 nolle pross'd; 17 pending; 2 sentence pending; 1 fined $20; 13 fined $25; 1 fined $30; 12 fined $50; 1 sent to the county jail for 15 days; 6 sent for 30 days; 1 sent to the Detroit House of Correction for 90 days.
(*g*) Selling without paying tax	1,068	Six hundred ninety-three convicted; 242 acquitted; 25 dismissed on payment of cost; 40 nolle pross'd; 17 dismissed on examination; 39 pending; 2 awaiting sentence; 4 suspended sentence; 399 suspended sentence on payment of tax; 1 fined $1; 5 fined $10; 24 fined $25; 105 fined $50; 1 fined $60; 63 fined $75; 54 fined $100; 14 fined $150; 15 fined $200; 1 sent to the county jail for 15 days; 1 sent for 9 months; 1 sent to the Ionia House of Correction 90 days; 1 forfeited bonds; 5 P. Attys. filed reasons for not filing information.
(*h*) Selling to common drunkard	13	Six convicted; 1 acquitted; 1 nolle pross'd; 3 dismissed on examination; 2 pending; 3 fined $10; 1 fined $15; 1 fined $58; 1 sent to the county jail for 30 days.
(*i*) Selling without license	210	Ninety-one convicted; 22 acquitted; 40 dismissed on payment of costs; 11 nolle pross'd; 2 dismissed on examination; 21 pending; 23 discharged on payment of license; 1 awaiting sentence; 23 sentence suspended; 24 fined $10; 11 fined $20; 1 fined $30; 1 fined $40; 1 fined $100; 17 fined $200; 1 sent to the county jail for 60 days; 11 sent for 90 days.
(*j*) Unlawful sales by druggists	4	Two acquitted; 2 pending.

SCHEDULE H—*Continued.*

Charged with.	No.	Result and punishment.
(*k*) Unclassified	535	One hundred seventy-three convicted; 18 acquitted; 55 dismissed on payment of costs; 49 nolle pross'd; 26 dismissed on examination; 212 pending; 4 suspended sentence; 2 forfeited bonds; 2 fined $1; 5 fined $10; 6 fined $15; 3 fined $20; 62 fined $25; 7 fined $30; 3 fined $35; 2 fined $40; 30 fined $50; 2 fined $75; 1 fined $90; 12 fined $100; 1 fined $125; 2 fined $117.50; 20 fined $200; 1 fined $210; 1 sent to the Detroit House of Correction for 90 days; 3 complaints defective; 1 sent to the Insane Asylum; 1 sent to the county jail for 10 days; 1 sent for 15 days; 2 sent for 40 days; 1 sent for 60 days; 1 sent for 90 days.
Violation of local option law	37	Fifteen convicted; 3 nolle pross'd; 19 pending; 1 appealed to Supreme Court; 1 fined $50; 5 fined $75; 2 fined $100; 1 fined $150; 2 fined $200; 1 sent to the county jail for 15 days; 1 sent for 20 days; 2 sent for 30 days; 1 sent for 5 months.
Violation of marriage law	1	One pending.
Violation of pharmacy law	11	Eight convicted; 2 acquitted; 1 nolle pross'd; 7 fined $10; 1 sent to the county jail 30 days.
Violation of tobacco law	17	
Classified as follows:		
(*a*) Vending cigars with forged labels	1	One pending.
(*b*) Furnishing tobacco to minors	15	Fifteen convicted; 1 fined costs; 1 fined $1; 12 fined $5; 1 sentenced to the county jail for 5 days.
(*c*) Unclassified	1	One convicted; 1 fined $5.
Willful trespass	95	Forty-two convicted; 16 acquitted; 9 dismissed on payment of costs; 23 nolle pross'd; 2 dismissed on examination; 3 pending; 15 suspended sentence; 6 fined costs; 3 fined $1; 1 fined $3; 11 fined $5; 2 fined $15; 1 sent to the Reform School; 3 sent to the county jail.

SCHEDULE I.

County.	Prosecuting Attorney.	Postoffice.	No. of prosecutions.
Alcona	Mortimer D. Snow	Harrisville	10
Alger	Henry B. Freeman	Au Train	19
Allegan	Richard L. Newnham	Allegan	143
Alpena	James McNamara	Alpena	75
Antrim	Roswell Leavitt	Bellaire	45
Arenac	Farin C. Cummings	Omer	30
Baraga	Philip R. McKernan	L'Anse	110
Barry	William O. Lowden	Hastings	108
Bay	Curtis E. Pierce	Bay City	1,199
Benzie	W. E. Bailey	Benzonia	20
Berrien	Alison C. Roe	Berrien Springs	383
Branch	Elmer E. Palmer	Coldwater	108
Calhoun	John E. Foley	Marshall	600
Cass	L. B. Desvoignes	Marcellus	205
Charlevoix	Milton M. Burnham	East Jordan	81
Cheboygan	Henry G. Dozer	Cheboygan	69
Chippewa	Lawrence F. Bedford	Sault Ste. Marie	117
Clare	William A. Burritt	Harrison	47
Clinton	Henry J. Patterson	St. Johns	93
Crawford	Joseph Patterson	Grayling	150
Delta	James H. Clancy	Escanaba	146
Dickinson	A. C. Cook	Iron Mountain	145
Eaton	Horace S. Maynard	Charlotte	384
Emmet	Benj. T. Halstead	Harbor Springs	43
Genesee	John M. Russell	Flint	216
Gladwin	Thomas G. Campbell	Gladwin	37
Gogebic	Charles M. Howell	Bessemer	369
Grand Traverse	William H. Umlor	Traverse City	80
Gratiot	James Clarke	Ithaca	39
Hillsdale	Spencer D. Bishop	Hillsdale	197
Houghton	Allen F. Rees	Houghton	212
Huron	Hiram L. Chipman	Bad Axe	94
Ingham	Arthur D. Prosser	Mason	717
Ionia	Frank D. M. Davis	Ionia	772
Iosco	Main J. Connine	Oscoda	81
Iron	C. T. Crandall	Crystal Falls	123
Isabella	Herbert A. Sanford	Mt. Pleasant	80
Isle Royal	*		
Jackson	James A. Parkinson	Jackson	664
Kalamazoo	Lawrence N. Burke	Kalamazoo	720
Kalkaska	Cassius M. Phelps	Kalkaska	18
Kent	William F. McKnight	Grand Rapids	930
Keweenaw	Charles D. Hanchette	Hancock	7
Lake	H. Wirt Newkirk	Luther	53
Lapeer	William W. Stickney	Lapeer	131
Leelanau	Alex. McKercher	Leland	26
Lenawee	Frederick B. Wood	Adrian	463
Livingston	Dennis Shields	Howell	45
Luce	Frank H. Peters	Newberry	42
Mackinac	Peter N. Packard	St. Ignace	77
Macomb	James G. Tucker	Mt. Clemens	137
Manistee	Thomas Smurthwaite	Manistee	446
Manitou	*		
Marquette	H. Olin Young	Ishpeming	694
Mason	Gilbert H. Blodgett	Ludington	144

* No prosecuting attorney.

SCHEDULE I—*Continued.*

County.	Prosecuting Attorney.	Postoffice.	No. of prosecutions.
Mecosta	Frank B. Davison	Big Rapids	88
Menominee	Fabian J. Trudell	Menominee	331
Midland	Floyd L. Post	Midland	75
Missaukee	Francis O. Gaffney	Lake City	18
Monroe	Alonzo B. Bragdon	Monroe	90
Montcalm	Frank A. Miller	Stanton	302
Montmorency	James B. Beverly	Hillman	18
Muskegon	Willard J. Turner	Muskegon	324
Newaygo	Armond F. Tibbits	Newaygo	93
Oakland	George W. Smith	Pontiac	355
Oceana	Henry W. Harpster	Pentwater	48
Ogemaw	Nelson Sharp	West Branch	45
Ontonagon	W. W. Wendell	Ontonagon	51
Osceola	Henry D. Merrithew	Marion	52
Oscoda	John J. McCarthy	Mio	26
Otsego	William A. Harrington	Gaylord	66
Ottawa	Peter J. Danhof	Grand Haven	171
Presque Isle	Philip A. Ingleshy	Rogers City	49
Roscommon	Henry H. Woodruff	Roscommon	35
Saginaw	William R. Kendrick	Saginaw (E. S.)	716
Sanilac	Edward C. Babcock	Sanilac Center	53
Schoolcraft	C. W. Dunton	Manistique	70
Shiawassee	Selden S. Miner	Corunna	59
St. Clair	Cyrus A. Hovey	Port Huron	888
St. Joseph	Hugh P. Stewart	Centreville	112
Tuscola	Timothy C. Quinn	Caro	78
Van Buren	Lincoln H. Titus	Paw Paw	139
Washtenaw	Michael J. Lehman	Ann Arbor	452
Wayne	Samuel W. Burroughs	Detroit	7,777
Wexford	Clyde C. Chittenden	Cadillac	74
Total number of prosecutions			24,537

SCHEDULE J.

OPINIONS OF THE ATTORNEY GENERAL.

Right of presiding officers to vote.

The president of the school board, organized under act No. 298 of the Local Acts of 1889, is entitled to vote whether such vote be cast in deciding a tie or otherwise.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 3, 1891.

C. D. MCEWEN, ESQ., *City Attorney, Gladstone, Mich.:*

DEAR SIR—Your favor of June 19 asking whether "the president of the school board of your school, organized under Act 298 of the Local Acts of 1889, would have a right to vote only in case of a tie, or has he a right to cast a vote in other cases, and possibly by such vote create a tie on the board" is received and considered.

Section 1 of chapter 7 of the act provides that "the city of Gladstone shall constitute a single school district, etc."

Section 2 provides—"The management of said school shall be vested in a Board of Education consisting of six members, to be elected by the electors of the city at large and at the time and for the terms hereinafter provided."

Section 3 provides for their election and term of office.

Section 17 provides for the organization of such Board of Education as follows: "The members of the Board of Education shall immediately after their election as such, meet at such time and place as shall be specified in the notice of election by the clerk of said village of Gladstone, after the first election herein provided for, and after subsequent elections, by the clerk of the city of Gladstone, and organize by the election of a president, treasurer and secretary of such board, chosen and elected from the members thereof."

It will be seen by section 2 that the management of the school is vested in a board, and that the board consists of six members. It will be seen by section 17 that the officers of the board "are chosen and elected from the members thereof."

It has often been held, unless expressly prohibited by the statute or constitutional limitation, that where a presiding officer is a member of the body, elected for the same purpose as the other members, he has the same right to vote as is possessed by the other members of the board or legislative assembly, but where the presiding officer is only an *ex officio* member of the board or body over which he presides, he is not entitled,

without it is expressly so provided by law or constitutional enactment to a vote, except in case of a tie. Thus, the Speaker of the House of Representatives, being a member by election, is entitled to a vote and does vote even though his vote creates a tie; while the President of the Senate, who is a presiding officer only by virtue of the law and constitution, can only vote in cases expressly provided by law.

The president of your board is a member of the board. Your charter contains no provisions, so far as I am able to find, defining his duties.

Cushing's Practice of Legislative Assemblies, based largely on the English rule, would be authority for holding that a presiding officer can vote only in case of a tie, yet it does not seem to me under the well-established rule in the United States, that where a person is elected as a member of a body, possessing the same rights and powers of other members, the simple fact that he is named by his associates to preside over the body, there being no law or by-law to the contrary, he should be deprived of his right to vote. There is a very respectable authority holding that in a case where the casting vote is expressly given to a member of such a board, he would not only be entitled to a vote with the balance of the members, but also in case of a tie an additional vote. Such was the holding of the Court in the case of the People v. Rector, etc., of the Church of Atonement, 48 Barbour, 603.

I conclude from the examination of your charter and the authorities, that the president of your board would be entitled to one vote, whether such vote be cast in deciding a tie or otherwise.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation for private purposes.

There is no authority under the law to tax the people of a township to raise a bonus for a grist-mill. Taxation must, in all cases, be for public purposes.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 7, 1891.

H. L. COWLEY, ESQ., *Supervisor, Evart, Mich.:*

DEAR SIR—Your letter stating that a portion of the free-holders of your township wished to bond the township to raise a bonus for a grist-mill, and asking whether in my opinion it would be legal, is received.

There is no authority under the law to tax the people for such a purpose. A man may, if he sees fit, donate his property to assist in private enterprises, but it is not within the authority of the township to collect a tax against its inhabitants for such a purpose.

Taxation must in all cases be for public purposes, by which I mean something in which the public will have some stated and definite interest after the work has been performed. While the public have an interest in improvements, they have not such an interest as will justify the assessment of a tax for the purpose of building up private property.

The mill when constructed would belong to some private individual or

corporation, and the public would have no more interest in it than they would have in the general success of any business man who might locate in their midst; and such an interest is too indefinite and uncertain to be the basis of taxation. I, therefore, advise you as a matter of law that your township has no legal right whatever to assess a tax for the purpose of paying a bonus for the construction of a mill.

Very truly yours,
A. A. ELLIS,
Attorney General.

Taxes—Right of Auditor General to dispose of lands bid off to the State for taxes of 1886—Statute construed.

Under section 71 of Act No. 195 of the Laws of 1889, the Auditor General has no legal right to dispose of State tax lands bid off to the State for taxes of 1886 and previous years, at a sum less than one hundred per cent of the taxes and charges.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 8, 1891.

HON. GEORGE W. STONE, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your question as to whether "you would have authority under section 71 of Act No. 195 of the Public Acts of 1889, to continue the sale of lands that had heretofore been bid off in the name of the State for taxes assessed in the year 1886 and previous years, at the rate of twenty-five per cent of the amount chargeable against such land," is considered.

The section above referred to provides that: "At the time designated in the notice such County Treasurer shall offer the lands embraced in such statement for sale to the *highest* bidder, but no bid shall be accepted unless equal to twenty-five per cent of the amount chargeable against such lands."

This law contemplates that the lands shall be sold to the *highest* bidder, but of course they might sell at one hundred per cent, seventy-five per cent, fifty per cent, or as low as twenty-five per cent of the amount against the lands, and in such case this section provides that: "All losses sustained by selling for less than the taxes, interest and cost against the same shall be borne by each tax as classified when assessed against the same, *pro rata.*"

The statute does not make any other provision for the sale of these lands for less than one hundred per cent; and should the Auditor General dispose of the lands for less money, the county might well say that they were deprived of the right of competition by bid, because the lands were not sold as the law expressly provided that they should be, that it did not necessarily follow that the amount assessed against them was not worth to exceed twenty-five cents on a dollar—the lowest amount named in the section—and the State should be required to account for the full amount. This would raise a very unpleasant question, which should be avoided.

I do not believe that the statute above referred to authorizes any disposition of these lands at a less sum than one hundred per cent of the taxes

and charges, except they are offered at auction in the manner provided by the statute.

I, therefore, give it as my opinion that you have no legal right to dispose of this land at private sale, unless the party purchasing pays to you the full amount chargeable against such lands.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Insurance—Exemptions from application of the insurance law.

"The Mutual Life and Endowment Order," which is not limited in its membership to any particular class or occupation, does not come within the exceptions expressed in Section 25 of Act 187 of the Laws of 1887.
If it do business in this State it should be required to comply with the general provisions of the law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 9, 1891.

HON. WILLIAM E. MAGILL, *Commissioner of Insurance, Lansing, Mich.:*

DEAR SIR—The question submitted to me by your department as to whether the "Mutual Life and Endowment Order" can be considered as coming within the provisions of section 25 of Act No. 187, of the Laws of 1887, as a "fraternal society," has been by me considered.

As appears by the copy of the articles of association presented with your question, article 3 among other things provides: "The objects and purposes for which said corporation is formed are:

"1. To unite fraternally all acceptable persons of good character and sound bodily health."

It will be seen that this society is not limited in its membership to any particular class or occupation. I fail to find how this organization comes under any of the exceptions expressed in section 25 of Act 187 of the Laws of 1887.

First, It is not under the supervision of a grand or supreme body, securing the members through the lodge system exclusively.

Second, It is not an association organized solely for benevolent purposes, composed wholly of members of one occupation, profession, or religious denomination, or fraternal society, their wives or widows.

On the contrary it is composed of "all acceptable persons of good character and sound bodily health." In other words, it includes every person that any other insurance company might take; and there are some provisions, or lack of provisions, that render the society somewhat dangerous under any theory. It does not appear to have any limit whatever as to the age of the persons who may become members.

It is my opinion that you should require the "Mutual Life and Endowment Order," if it does any business in this State, to comply fully with all the requirements of Act No. 187 of the Laws of 1887.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

County School Commissioner—Who eligible to office of—Quo Warranto—County School Examiner—Who eligible to office of.

A person who has held only a third grade certificate and who never graduated from any school other than an academy, is ineligible, under Act 147 of the Laws of 1891, to hold the office of county school commissioner.

Quo warranto proceedings in the Circuit Court is the proper remedy to remove such officer.

A member of the county board of school examiners would be eligible to such office if otherwise qualified.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 10, 1891.

J. W. HILL, ESQ., *Chairman of Board of School Examiners, Coleman, Mich.:*

DEAR SIR—Your favor of July 6th, asking whether a person who has not held a certificate above the third grade for several years, and who never graduated from anything only an academy, is eligible to the office of county school commissioner, is received and considered.

The act provides that: "A person to be eligible to the office of county school commissioner must be a graduate in the literary department of some reputable college, university, or State normal school, or hold a State teachers' certificate, or shall have held a first grade certificate within two years next preceding the time of his or her election, or shall have held the office of county commissioner under this act." And of course these qualifications would exclude the person you name, as the latter clause relative to persons who have held an office under this act could have no application to a person who, when elected in the first instance, was ineligible.

In regard to your question as to how a person who has been elected by the Board of Supervisors can be removed, I should say that the proper way would be to commence against him by *quo warranto* proceedings in the Circuit Court, if he assumes to act. The Board of Supervisors might treat the appointment as void and appoint some other person, and if such other person was acknowledged as the County Commissioner by the other members of the Board of Examiners, it would probably put the person who was not qualified to the trouble of commencing the proceeding himself.

Any member of the County Board of School Examiners would be eligible if he possessed the other qualifications. But if such other member be elected as commissioner, he would necessarily thereby vacate his other office, and some one should be appointed in his place as examiner.

Respectfully yours,
A. A. ELLIS,
Attorney General.

Taxes—Injunction to restrain waste.

Under section 1 of Act 223 of the Laws of 1889, where waste is being committed on lands which are chiefly valuable for timber, on which the tax is unpaid, it is the duty of the township treasurer, by the Prosecuting Attorney of the county, to file an injunction bill in the Circuit Court, and to apply for an injunction to stay waste, such application being supported by proper affidavits.

The right of action under this section would continue after the tax roll was left in the hands of the township treasurer.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 10, 1891.

MESSRS. SETH DUNDAS, CHARLES VAN BUREN, THOS. LANCASTER AND JOHN MORRISON, *Township Board of Clearwater, Clearwater, Mich.:*

GENTLEMEN—Your favor of July 3d stating that "lumbermen in your territory had failed to pay their taxes and were now cutting off the pine, and asking what course you should take," is received and considered.

By Act No. 223 of the Laws of 1889, Sec. 1, the Legislature attempted to provide a remedy for such cases. The section provides that: "When any person, company or corporation shall neglect or refuse to pay any tax assessed on the lands of such person, company or corporation within the time specified by law, the township treasurer shall be entitled to an injunction to restrain waste on any of such lands upon which the taxes shall remain unpaid, when it shall appear that such lands are chiefly valuable for the timber being, standing or growing thereon. And any Circuit Judge or Circuit Court Commissioner of the county in which such lands are situated may, on the application of such township treasurer, make an order restraining any person from committing waste thereon."

The only question that could be raised under this would be whether the fact that the tax-roll had passed out of the hands of the township treasurer would suspend the action of this section. It seems to me that the intention of the Legislature was to make the township treasurer, who would be near the land where the timber was being cut, the agent for the county and State to look after these matters.

You will observe by the section that its language is broad enough to apply in all cases where the taxes still remain unpaid, and there is danger of injury to the public by reason of waste.

The township treasurer would have to support his application by affidavits in any case that the taxes were unpaid, and in this case by the affidavit of the County Treasurer, and perhaps by the Auditor General. He must also furnish further affidavits that the parties owning the land on which the tax is unpaid are removing the timber, and that the land was chiefly valuable for the timber thereon situated, and that by reason of the removal, the township, county and State are liable to suffer loss.

It is far better for a public officer to attempt to protect the public, even though he should fail on account of some imperfection in the law, than to hesitate to do what is right by reason of not fully understanding what the Court might hold relative to any particular statute.

I, therefore, give it as my opinion that it is the duty of your township treasurer to cause the Prosecuting Attorney of your county to file an injunction bill in the Circuit Court, and apply to the Circuit Judge for an injunction staying the waste in this case Of course if the parties who

owe the tax should pay the same, no further proceedings after the service of the injunction would be necessary.

Relative to the other question which you ask in your letter, I would refer your board to chapter 63 of Howell's Annotated Statutes, and particularly to section 2163 of said statutes.

Respectfully,
A. A. ELLIS,
Attorney General.

Incompatible offices. Office of supervisor and county school commissioner incompatible. Acceptance of one vacates the other.

The offices of commissioner and supervisor are incompatible, and one person can not hold both offices.

The offices of county school examiner and supervisor are not incompatible, and an acceptance of one would not operate as a surrender of the other.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 15, 1891.

JAMES FRANCIS, ESQ., *Hillman, Mich.:*

DEAR SIR—Your favor stating that "at the last meeting of the Board of Supervisors of Montmorency county they elected one of their own number school commissioner for two years, and another as examiner for one year," and asking me if the appointment of these persons was legal, is received and considered.

First, Concerning the appointment of the School Commissioner:

Section 10 of Act No 147 of the Public Acts of 1891, under which this appointment was made, provides that the compensation of the Commissioner, with certain limitations, shall be fixed by the Board of Supervisors; that the necessary contingent expenses of the Commissioner, within a certain limit, shall likewise be allowed by the Board of Supervisors as is also provided by the same section.

It is not the policy of our law to allow a man to hold an office by which he can determine his own compensation.

"It is a well established rule of the common law that one, who while occupying one office accepts another incompatible with the first, *ipso facto* absolutely vacates the first office, and his title is thereby terminated without any further act or proceeding."

This subject is thoroughly discussed in the following cases and authorities:

Stubbs vs. Lee 64 Me., 195.
People vs. Hanifan 96 Ill., 420.
State Bank vs. Curran, 10 Ark., 142.
Cooley's Con. Lim. 748, Note 1.
Mechem's Public Offices and Officers, Sec. 420.

Incompatibility between two offices is an inconsistency in the functions of the two; and all authorities agree that no man can act as judge in his own case. It does not take any stretch of imagination to see, when we understand human nature as it is, that a man would be very likely, if he

were permitted to fix his own salary, to take all the law would reasonably allow, and the same rule would apply in fixing the contingent expenses.

The Commissioner if allowed to occupy two offices, to wit: supervisor and school commissioner, would assist in auditing his own accounts and in fixing the amount of his own salary; and while I find no constitutional nor statutory prohibition declaring that a person can not hold both of these offices, yet I am clearly of the opinion that these two offices are incompatible, and that if a supervisor is appointed school commissioner, and he accepts that office by virtue of said appointment and acceptance he absolutely vacates the office of supervisor.

As there is no statutory or constitutional prohibition forbiding a supervisor to hold such an office, it is my opinion that a supervisor, if otherwise qualified, might be elected to the office of county school commissioner, subject, however, as above stated, to forfeiting the office of supervisor.

Second, Concerning your question of the appointment of a school examiner:

The compensation of that office is fixed and determined by the statute itself. It is four dollars per day. I see nothing incompatible in the two offices. A supervisor, if elected, might properly hold both offices, at least there would be no such incompatibility between the two as would make the holding of the one operative as a surrender of the other.

Very respectfully submitted,

A. A. ELLIS,
Attorney General.

Constitutional Law.

Act 147 of the Public Acts of 1891 is not unconstitutional for the reason that it provides for the appointment of officers in the place of those whose regular terms of office had not expired.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 15, 1891.

WILLIAM MCMILLAN, ESQ., *Berlamont, Mich.:*

DEAR SIR—Your favor requesting my opinion as to the constitutionality of the new law providing for the appointing of school examiners by the Board of Supervisors, questioning its constitutionality on the ground that it provides for the appointment of officers in the place of those provided in the old law, before the expiration of the regular term of office of such officer, is received and considered.

I do not believe the law is unconstitutional for that reason.

A public office is not a contract relation, and the office of secretary of school examiners provided for by the old law and abolished by Act 147 of the laws of 1891, is not a constitutional office, and the Legislature, when not restrained by the constitution, may abolish or modify at will official tenures and profits.

Wayne County Auditors vs. Benoit, 20 Mich., 176.

As there is no provision in the constitution restraining the right of the Legislature to pass such a law, I am of the opinion that the law is constitutional, and not in violation of any personal or official right.

Respectfully yours,

A. A. ELLIS,
Attorney General.

Foreign corporations—Proof of organization—Evidence.

Under section 17 of Act 187 of the laws of 1887, it is unnecessary to prove in all cases that foreign corporations are incorporated in some other state. It would be sufficient to prove that it was operating by virtue of some law authorizing associations unincorporated to do business.

The proof in the one case would consist of the articles of association, and in the other, that there was such an association; that it was doing business in another state; and that such business was authorized by the law of some other state.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 18, 1891.

JOHN E. FOLEY, ESQ., *Prosecuting Attorney, Marshall, Mich.:*

DEAR SIR—Your favor relative to the Wilson *mandamus* case, asking if the Court filed any written opinion in the case, and my opinion as to whether the statute covers associations not incorporated, is received.

The Court did not file any opinion. The question relative to the form of complaint was raised in the Supreme Court and argued the same as in the Circuit Court.

I am clearly of the opinion that it would be unnecessary to prove in all cases that the corporation, or association for which the agent was operating, was *incorporated* in some other state. This would be placing a condition and limitation in the statute that does not therein exist, and which is certainly entirely foreign to the intention of the Legislature. The intention of the Legislature, as clearly expressed, was to protect the people of this State from *all foreign associations*, both those incorporated and those doing business under and by virtue of some law of such other state or territory, and which might defraud the people by reason of a lack of pecuniary responsibility and other imperfections which have a tendency to deprive our people of their money without reasonable security or valuable consideration.

Section 17 of Act No. 187, which governs in the matter, reads as follows: "No corporation or association *organized or doing business under or by virtue of the laws of any other state* or territory of the United States or District of Columbia."

It would be necessary under this section to prove one of two things, to-wit: either that the company was organized as a corporation, or that it was operating by virtue of some law authorizing some association unincorporated to do business.

The proof in the one case would consist of copies of the articles of incorporation properly certified, and in the other case, there would necessarily have to be produced proof:

First, That there was such an association.

Second, That it was doing business in the other state named, and

Third, That such business was authorized by some law of that state.

The statute clearly provides for two classes of cases. I trust you will have no trouble to obtain the necessary proof.

Very truly yours,
A. A. ELLIS,
Attorney General.

Specific taxes—Postal Telegraph Company—Authority of State Board of Review—Tax liens.

The State Board of Review is a continuous board, but after a tax has become a debt due the State and a first lien upon the property, said board has no right to change the tax, or in any way waive such lien.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 20, 1891.

HON. DON M. DICKINSON, *Detroit, Mich.:*

DEAR SIR—In further reply to your favor stating that "the Michigan Postal Telegraph Company have made application to the State Board of Review to have its taxes adjusted, and that the board felt disposed to take up the matter but desired the opinion of the Attorney General as to its being a continuous board having power to adjust taxes levied by its predecessor," I would say that I have examined the question submitted, also the facts relative to the assessment of the Michigan Postal Telegraph Company.

From such examination I find that in 1886 said company failed to make any report of its property, and by virtue of section 1242 of Howell's Annotated Statutes, the Board of Review estimated the property of said company at $26,882.25, and assessed a tax thereon of $604.85; and in 1887, 1888, 1889 and 1890 said company each year made a report of its property as required by law, and was duly assessed during each year as follows: 1887, $500.63; 1888, $500.63; 1889, $518.56; 1890, $512.88.

All of the above described taxes, including the tax assessed during the year 1886, amounting to the principal sum of $2,637.57, with the interest thereon, still remain unpaid.

There certainly could be no mistake in the assessment of any of these taxes, unless it is in the tax assessed in 1886.

I find by examination of the records and files in the Auditor General's Office that this company were notified of the assessment of 1886 after it was assessed and before the tax was due, and that they have been notified of the same at least eight times since, and still the company has not paid this tax, nor taken any legal steps to test its validity, nor paid any of the taxes subsequently assessed.

The taxes are to be assessed during the month of July of each year, and they become due and payable to the State Treasurer on the first day of January following the levy thereof, and if not paid the State shall have a lien upon any line upon which such taxes are not paid and its appurtenances, which lien shall have a precedence over all other liens. (Sections 1238 and 1240 Howell's Statutes.)

The statute provides that the board may make a personal inspection of the property of the company; and the property is to be assessed "at its true cash value." (Section 1238 Howell's Statutes.)

It is, therefore, the duty of the board to pass judgment as to the value of the property. The effect of assessing taxes under such circumstances would be entirely different from an assessment where the board are bound by the return made by the company and have only the clerical duty to perform of computing the tax upon the valuation of the property returned. Although section 1237 provides for a statement to be made by the company, such statement is only made for the purpose of assisting the board

in making an assessment and in ascertaining the true cash value. It must be presumed that the board found all the facts to exist required by the statute which authorized them to make the assessment.

As the law makes it the duty of the company to furnish the Auditor General with this statement, if such statement had been furnished it would have assisted the board in making the assessment, and if an error occurred in making the assessment, it was more likely to be the result of the neglect of the company than any other influence that might have been brought to bear upon the board.

It was certainly the duty of the company as soon as they ascertained the amount of assessment to move promptly and not delay year after year before taking any action whatever in this matter. They could have asked for a hearing before the board, and being refused, after the tax became a lien, they could probably had an equitable action to set the same aside on the ground that the board did not have jurisdiction to levy the same; that is, if it was a fact that they were not doing business as found by the board. As is said by the Supreme Court in the case of the First National Bank of St. Joseph vs. City of St. Joseph, 46 Mich., 526: "If a taxpayer does not have the assessment of his property corrected and perfected when it is in his power to do so, he must be assumed to admit its correctness." Passing this matter: The only authority that the board has to assess a tax is obtained through and under the statute.

Statutes for the assessment and collection of taxes, as to what they require to be done for the protection of the taxpayer, are mandatory.

January 1st, after these taxes were once assessed as above stated, they became not only a debt due the State but a first lien upon the property, and whatever rights the board may have had after the first day of July and before the first day of January to reassess or correct this assessment, I do not believe they had a right after these taxes became, not only a debt but a lien upon the property, to change or in any way waive such lien. It is usually considered a very poor rule that will not, as it is said, "work both ways," that is, work out equity to both parties interested, in such a case by turning the circumstances around; suppose, for instance, after the first day of January, 1887, after this tax had become a lien, and after the board, acting upon their judgment, with such light as they possessed, had, as they supposed, assessed this property at its true cash value, discover that they had made a mistake and had not assessed the property as high as it should have been assessed, that its cash value was greater than that placed upon it by the board, would the board have authority to increase it? It seems to me that it would be folly to contend that a board given no statutory power in that regard, could increase the taxes against the company for the preceding year.

I believe this board could do whatever could have been legally done by the old board if that board was now in office, but I am just as clearly of the opinion that after the taxes became a debt and a lien that the old board had no power to change the assessment. There is no statute giving them any such power; they have no power not given by the statute either by express terms or by clear implication.

There is one precedent of this board where a tax was re-adjusted, but in that case the board did not attempt to set aside, vary, or change a *tax after it had become due to the State and a lien upon the* property. I refer to the case of the Mutual Union Telegraph Company. After that company was first assessed, and during the month of December, prior to the

time it would become a lien, the Board of Review, on petition of the company, deducted certain property that should not have been included and then reassessed the taxes, using the same rate or unit by which to multiply the residue.

I am unable to find any authority permitting or authorizing the Board of Review to make any change in any of the taxes assessed against the Michigan Postal Telegraph Company at the present time; and it is my opinion that said company is legally indebted to the State of Michigan for the whole amount of taxes specified with the interest thereon.

There might be some question concerning the manner of the service of the demand for payment, and whether such service was made so as to make the company liable for the penalty prescribed by section 1 of Act No 226 of the Public Acts of 1889, and, taking that into consideration, I should recommend to the board in case this company should pay its taxes without further delay, and with interest at seven per cent, that they be accepted. The tax record shows the value of the taxes, the rate and the result of the multiplication, and I do not mean to hold that if there is found any clerical error in the figures, such error would bind the company; as the whole roll might be examined, only the amount due with the interest should be exacted.

Very respectfully yours,
A. A. ELLIS,
Attorney General.

Construction of Act 147 of the Public Acts of 1891—Board of County Examiners—Of whom to consist.

Act 147 of the Public Acts of 1891, which took immediate effect, does not cause a vacancy in the offices of the Board of School Examiners. Between the second Tuesday of August and the second Monday of October, the board will be composed of the new commissioners and the old examiners.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing July 21, 1891.

HON. FERRIS S. FITCH, *Superintendent Public Instruction, Lansing, Mich.:*

DEAR SIR—Your favor received, stating in substance that section 1 of Act No. 147 of the Public Acts of 1891 provides that the Board of Supervisors at their meeting to be held on the fourth Monday in June, 1891, "shall elect a County Commissioner of schools for their respective counties, whose term of office shall commence on the fourth Tuesday of August next following * * * * and the said Board of Supervisors shall also on the said fourth Monday of June appoint two persons as school examiners * * * * one of said school examiners shall be appointed for one year, and the other for a period of two years from and after the second Monday of October next after their appointment."

Sections 1 and 2 of chapter 12 of the General School Laws provide for the election of two school examiners (one examiner to be elected each year by the inspectors of the several townships), the school examiners to hold their office for two years from the fourth Tuesday of August

following their election; and the Secretary of School Examiners to be elected on the fourth Tuesday of August each year, and hold his office for one year.

At the time of the passage of Act No. 147 of the Public Acts of 1891, there was in office one Secretary of the Board of School Examiners in each county, whose office would expire, were it not for said act, on the fourth Tuesday of August, 1891; and two School Examiners, whose offices would expire, were it not for said act, one on the first Tuesday of August, 1891, and one on the first Tuesday of August, 1892.

The above named officers provided for by Act No. 147 of the Public Acts of 1891 are to perform substantially the same duties performed by the officers provided for by sections 1 and 2 of Chapter XII of the General School Laws. Section 14 of Act No. 147 provides that "all acts or parts of acts conflicting with the provisions of this act are hereby repealed. This act is ordered to take immediate effect."

The questions are:

First, When will the terms of office of the secretaries and examiners who were in office at the time of the passage of the above act expire?

Second, If it is held that they continue in office until the terms of the corresponding officers under the new law begin, will the inspectors meet on the first Tuesday of August, as provided in section 1, chapter XII, of the General School Laws, for the election of an examiner to succeed the one whose term of office expires at that time?

Third, If it is held that the examiners and secretaries appointed under the old law continue in office until the terms of the officers under the new law begin, there will be a period, from the fourth Tuesday in August until the second Monday in October, when the board will be composed of the commissioner appointed under the new law and two examiners who were appointed under the old law. Under which law will they act during that period?

Fourth, Under which law will the board act from the time of the passage of act No. 147?

As you have already suggested, it will be observed that the new act provides substantially for three officers, two of them to be of the same name as under the old law, who are to perform the same duties provided for by the law as it existed prior to the passage of this act. All the other provisions of the law contained in act No 147 are substantially a re-enactment of the existing law.

It will further be observed that under act No. 147 the office of "county commissioner of schools" commences at the same time that the office of secretary of schools will expire, now in office; and Act No. 147 does not attempt to limit, abridge, or in any manner dispose of the duties devolving upon that office.

It will be further observed that section 4 of Act No. 147 provides for two regular public examinations in each year to begin on the first Thursday of March and August in each year, which section is substantially a re-enactment of section 1 of chapter XII of the General School Laws, the time of examination being the same under both laws. The first examination takes place on the first Thursday in August, 1891, while the office of county commissioner of schools does not commence until the fourth Tuesday of August, 1891. The examiners provided for by Act No. 147 are not authorized to enter upon the duties of their offices until the second Monday of October, 1891, hence, if the passing of Act No. 147 of the Public Acts of

1891, and giving it immediate effect, and declaring that all acts and parts of acts conflicting with the provisions of such act are repealed, vacates these offices, then there are no officers qualified to hold the public school examination provided for in August, 1891.

What was the intention of the Legislature? They did not declare that the office of secretary of schools or school examiners appointed under the old law shall be vacant, and they do not abolish any of the duties of those offices, and they did provide expressly that, after a given date, the duties of those officers shall be performed by persons who are to be elected in a different manner.

We must, in construing this statute, consider that the object of the construction is to ascertain and carry into effect the intentions of the Legislature.

People vs. Oakland County, 1 D., 282.
Maloney vs. Mahar, 1 Mich., 26.
Niles vs. Rhodes, 7 Mich., 374.
Whipple vs. Saginaw Circuit Judge, 26 Mich., 342.
Albany & B. Mining Co. vs Auditor General., 37 Mich., 391.

And the intent when manifest must not be defeated by the construction.

Parsons vs. Wayne Circuit Judge, 37 Mich., 287.
French vs Lansing, 30 Mich., 378.
Brooks vs. Hill, 1 Mich., 118.
People vs. Plumstead, 2 Mich., 45.

Another rule which should be considered in interpreting a statute is that a construction that will result in great inconvenience is to be avoided unless the meaning of the Legislature is plain, in which case it is to be obeyed.

Wales vs. Lyons, 2 Mich., 276.

If Act No. 147 be construed to remove from office and suspend the action of all officers now in office by virtue of chapter XII of the General School Laws, one of the public examinations provided for by both the new and the old law, during the present year, is to be suspended, and the teacher will be greatly annoyed, if not in some cases absolutely prohibited from obtaining certificates; while the various school districts which are required to obtain qualified teachers in order to be entitled to the public money, will be placed at great inconvenience and possibly at the absolute necessity of hiring teachers who have not the necessary certificates, because in such case there can be no examination whatever of any teacher until after the second Monday of October, 1891, and no regular examination at which first and second grade certificates can be issued till March, 1892.

In the case of Peters vs. Auditors, 33 Grattan, 368, in discussing a question whether a statute that took immediate effect and abolished an office would affect a person then in office, the Supreme Court of Virginia, after showing the duties that were necessary to be performed by that officer and that if a holding was made that the present incumbent was not entitled to hold the office, there would be no person qualified to perform the duties, said: "But there is another rule of construction of statutes recognized by this Court, and by the Supreme Court of the United States, which applies with potent effect to the proper construction of the statute before us. That rule is stated thus by an eminent chancellor of New York, adopted

by the Supreme Court of the United States, as follows: 'A construction of the statutes which will necessarily be productive of practical inconvenience to the community will be rejected, unless the language of the law given is so plain as not to admit of a different construction.'" See also

Terrell vs. Pingree, 16 Pac. Rep., 843.

Mr. Cooley lays it down as a sound rule of construction, "that a statute should have prospective operation only unless its terms show clearly a legislative intention that it should operate retrospectively."

Cooley's Con. Lim. 370 and cases cited.

It was said by Chancellor Walworth "to be a general rule in the construction of statutes that they were not to have a retroactive effect so as to impair previously acquired rights, and courts of justice will apply new statutes to future cases which may arise, unless there is something in the nature of the new provisions adopted by the Legislature, or in the language of such new statutes which show that they were intended to have a retrospective operation."

Another very important rule in the construction of statutes is that a prior law on the subject is to be considered in arriving at a true construction of the later statutes.

Taber vs. Cook, 15 Mich., 322.

It will be seen by examining Act No. 147 of the Public Acts of 1891, that it is in no sense an independent act, but it is designed to take the place of a portion of chapter XII of the General School Laws and to provide for officers to have the supervision of and conduct examinations of teachers for the schools of the various counties of the State. It must be construed with the general school laws so as to make the whole system as intelligent as possible. The rule is well established in this State that statutes *in pari materia* must be construed together, and the meaning of the later enactments determined by comparing them with the others.

Simpkins vs. Ward, 45 Mich., 559.
People vs. May, 3 Mich., 598.
Galvin vs. Abbott, 6 Mich., 17.

It has been held by the Supreme Court of this State that when an old law is substantially re-enacted as a part of a new law the old law is not repealed but continued in force.

Davenport vs. Auditor General, 70 Mich., 192.
Merkle vs. Bennington, 68 Mich., 135.

Act No. 147 does not purport to repeal any part of the general school laws that is consistent with its provisions.

The office of the secretary and one examiner will lapse by limitation of law before the officers under Act No. 147 will be authorized to enter on the duties of their offices.

Having given the rules for the construction of this statute and pointed out some matters which I thought it better to refer to, I answer your questions as follows:

First, The terms of office of the secretaries will expire on the fourth Tuesday of August, 1891, and the office of the examiners who were in office at the time of the passage of act No. 147 will expire on the second Monday of October, 1891.

Second, Under section 1 of chapter XII of the General School Laws, the School Examiners were to hold their office for two years or till their successors were elected and qualified. It was the intention of the Legislature

by Act No. 147 to shorten the office of one of the examiners and extend that of the other, so that the one whose office would expire on the first Tuesday of August should hold over until his successor should take his place on the second Monday of October, 1891, and that the other examiner should surrender his office to his successor at the same time; and as the manner of election provided for by section 1 of chapter XII of the General School Laws is in conflict with section 1 of Act No. 147 of the Public Acts of 1891, that portion of the former section relative to elections is superseded by section 1 of the latter enactment; and there could legally be no election by the inspectors on the first Tuesday of August, 1891, and as the officer whose term of office would expire on the first Tuesday of August, were it not for Act No. 147, will hold over till the second Monday of October, no election whatever is required.

Third, Between the second Tuesday of August and the second Monday of October the board will necessarily be composed of the County School Commissioner and the two Examiners who were in office at the time of the enactment of Act No. 147 of the Public Acts of 1891; and said board composed of the persons aforesaid should conduct business relative to examinations and granting of certificates in accordance with the provisions of Act No. 147.

Fourth, From and after the 19th day of June, 1891, it is the duty of the board at all times while conducting examinations, granting certificates, and other proceedings of said board, to conform to the provisions of Act No. 147 of the Public Acts of 1891.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

School meetings—Women—When entitled to vote at school meetings.

An annual school meeting may be adjourned from time to time until all of the business that may legally come before it, is completed.

A woman who is twenty-one years of age, and is the guardian of a child included in the school census, and has resided in the district three months previous to the holding of any school meeting, is entitled to vote on all questions which do not directly involve the raising of money by tax. If she also has property liable to assessment in the school district, she is entitled to vote on all questions.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 23, 1891.

L. E. WICKENS, ESQ., *Secretary of the Board of Education, Holly, Mich.:*

DEAR SIR—Your favor of the 21st asking the following questions:

1. "Can an annual school meeting be legally adjourned or held open for one week or more?"

2. "Can a man and his wife each legally vote at the same annual school meeting, providing the woman is not a freeholder and is not assessed in her own name in the school district?" is received and considered.

To your first question I answer, yes.

An annual school meeting may be adjourned from time to time by a

majority of the legally qualified voters present until such time as all of the business that may legally come before the meeting is disposed of.

Subdivision 2, Sec. 20 of Chap. 2 of the General School Laws.

Concerning the second question: It is not definite enough to give you a direct answer.

1. If a married woman is twenty-one years of age and is the parent or legal guardian of any child included in the school census of the district, and resides in the district, or upon any territory belonging to the district for three months prior to the holding of the meeting, she would be entitled to vote upon all questions arising in said district which do not directly involve the raising of money by a tax.

2. If she is twenty-one years of age and has property *liable to assessment* for school taxes in the school district, and has resided therein for three months preceding such school meeting held in the district, the woman would then be entitled to vote upon all questions.

Her right to vote does not depend upon the fact that she was *actually assessed* on the assessment roll, but upon the fact that she "has property *liable* to assessment for school taxes."

Section 17, chapter 2 of the General School Laws.

Respectfully yours,
A. A. ELLIS,
Attorney General.

Liquor law—Duty of officers to prosecute for violations of.

Under section 17 of Act 313 of the Laws of 1887, it is the duty of police officers to notify the Prosecuting Attorney of all violations of the law, and it is then the duty of the Prosecuting Attorney to take charge of and conduct the prosecution.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 23, 1891.

J. H. GAGE, ESQ., *Petersburg, Mich.:*

DEAR SIR—Your favor of July 16th received, asking for my opinion relative to the following clause in section 17 of Act No. 313 of the Public Acts of 1887: "And it shall be the duty of sheriffs, marshals, constables and police officers to close all saloons, houses or places that shall be found open in violation of the provisions of this section, and to report forthwith all such violations to the Prosecuting Attorney, whose duty it shall be to immediately prosecute for such violations."

I am at a loss to see how my opinion will make that part of the section any plainer than it is. It is just as plain as the English language can make it.

Without any reference to other laws which might make it the duty of all officers, who discover persons violating the law, to institute proceedings, this statute points out a course for the police officers to pursue, among which are the following duties:

First, On discovering a violation of the law, he shall notify the Prosecuting Attorney.

Second, On receiving the complaint, it would then be the duty of the

Prosecuting Attorney to draw up a written complaint, and request the party complaining and who is knowing of the facts, to go before a justice of the peace and swear to it. And,

Third, The Prosecuting Attorney should then take charge of and conduct the prosecution.

Respectfully yours,
A. A. ELLIS,
Attorney General.

Power of Board of State Auditors to require annual settlements—Construction of Act 146 of the Laws of 1891.

Section 5 of Act 146 of the Public Acts of 1891, which is an act relative to the uniform regulation of certain State institutions, does not repeal or in any manner limit the power of the Board of State Auditors, under and by virtue of sections 307, 308, 309, 310 and 371 of Howell's Statutes. It may, however render action on the part of the board unnecessary.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 27, 1891.

To the Honorable, the Board of State Auditors:

GENTLEMEN—Concerning the question presented to me by your board, asking my opinion whether section 5 of Act No. 146 of the Public Acts of 1891 repealed sections 307, 308, 309, 310 and 371 of Howell's Annotated Statutes relative to the powers of your board, I am of the opinion that said section does not repeal or in any manner limit your power under and by virtue of the sections above quoted.

Section 5 above mentioned is an amendment to section 5 of Act No. 206 of the Public Acts of 1881, entitled "An Act to provide for the uniform regulation of certain State institutions, and to repeal," etc. Section 9 of the same act contains this saving clause: "That nothing in this act shall be construed as amending or repealing any act or parts of acts providing for financial reports by any of said State institutions to the Auditor General, Board of State Auditors, or to any other State officer, as now provided by law." The scope of section 5 must, at least, be considered as limited to the object expressed in the title of the act.

Section 1 of the original act (Act No. 206 of the Public Acts of 1881, section 412 of Howell's Statutes) of which section 5 above referred to is a part, applies the act to "all educational, charitable, reformatory and penal institutions supported wholly or in part by the State."

When section 5 is read in connection with the title it is plain that the intention of the Legislature was to provide for the report and settlement of the accounts of certain institutions.

Owing to the very excellent manner of keeping the books in the Auditor General's office between the State and the several educational, charitable, reformatory and penal institutions and the law which requires such institutions to file vouchers with the Auditor General and gives him authority to pass on the same (Howell's Statutes, sections 365, 366, 367, 368, 369), as a matter of fact so much of the law as relates to the Board of State Auditors settling with these several public institutions has, since the enactment of Act No. 206 of the Public Acts of 1881, practically been a "dead letter."

In passing section 5 of Act No. 146 of the Public Acts of 1891, the Legislature extended the authority of the Auditor General by providing that a final settlement each year, by the Auditor General, shall be made with the several penal, reformatory, charitable and educational institutions of the State.

Inasmuch as this section gives authority to the Auditor General to make a settlement annually on behalf of the State with these several institutions referred to, and he is also required by law to file the vouchers and pass upon the accounts from month to month, unless under very peculiar circumstances, there would be no necessity whatever of the Board of State Auditors incurring the expense of reviewing or going over a settlement, and doing exactly the same work that has been done by the Auditor General.

There are, however, embraced in the section first above quoted certain powers and duties devolving upon the Board of State Auditors that are not in the least affected by section 5, and which it could not, under the title of the act, be construed in any manner to affect, viz.: That portion relating to the several disbursing and collecting officers and boards throughout the State, who are not connected with any State institution and with whom the Auditor General has no authority to make a final settlement. It would be the duty of the Board of State Auditors to have an annual settlement with all such persons and boards in the manner provided by law.

Second, As to the powers of the Board of State Auditors under sections 307, 308, 309, 310 and 371 of Howell's Statutes: I believe it is the duty of the board to ascertain in such settlement whether the moneys received by these collecting officers are properly accounted for, and whether the money expended by them has been expended in the manner provided by the law. If they have not that power, a settlement would be nothing but an idle ceremony.

Section 371 provides that: "The vouchers, receipts and abstracts shall be presented to the Board of State Auditors, and the board shall examine the same and shall make a settlement."

The power to make a settlement necessarily includes the power to allow or disallow an account.

Third, It will be observed that these several statutes, passed as they were some years ago, at the time they were passed contemplated a settlement at the close of the old fiscal year. Since that time the fiscal year has been changed, and I am of the opinion that the statutes changing the fiscal year would repeal the inconsistent portions of these statutes, or so far amend them as to provide for the settlement now at the close of the new fiscal year.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Corporal punishment in prisons—Use of leather paddles.

A "leather paddle" about five inches wide at the widest part, and made of sole leather, may be used, under proper rules adopted by the prison board, to inflict corporal punishment upon the prisoners in the State Prison, if not applied "on the bare body."

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 27, 1891.

HON. GEORGE N. DAVIS, *Warden of the State Prison, Jackson Mich.:*

DEAR SIR—Your favor relative to your right to use a "leather paddle" about five inches wide at the widest part and made of sole leather, in inflicting corporal punishment upon the prisoners in the State Prison for infraction of rules, is received.

Section 9699 of Howell's Statutes provides that: "The warden or deputy warden may punish convicts for misconduct in such manner and under such regulations as shall be adopted by the Board of Inspectors: *Provided*, That punishment by showering with cold water or by whipping with the lash on the bare back shall in no case be allowed."

The constitution of this State, Article VI, Sec. 31, prohibits "cruel or unusual punishment."

The whole theory of the law of the State of Michigan is that cruel punishment shall not be tolerated.

The section above quoted confines the prohibition of punishment in terms to a lash and showering with cold water, but a warden would not have the right to use some instrument which, though it could not be in terms called a lash, amounted to the same thing. A person clothed with such powers ought not to excuse himself by the claim that he had obeyed the letter when he has violated the spirit of the law.

Section 9781 of Howell's Statutes relative to the punishment of convicts in the State House of Correction and Reformatory at Ionia is a little broader. It reads: "No punishment by showering with cold water or whipping with the lash on the bare body *or any other brutal or inhuman punishment shall be allowed.*"

Under section 9781, the United States District Court for the Western District of Michigan held that if a strap was used to accomplish the same purpose, with the same end in view, and simply to evade the clause relative to a lash, the jury would have a right to consider the using of a strap a violation of the law the same as though the warden had really used a lash.

You will notice by reference to section 9699 of Howell's Statutes, controlling the punishment in your institution, that the objection goes as well to the manner of inflicting the punishment as to the instrument used.

It is not to be applied "on the bare body."

The instrument which you describe as "a paddle" could not fairly, under ordinary circumstances, be said to be a lash, and unless applied in the manner prohibited by the statute, to-wit: "on the bare body," I do not believe that, if the same was used under proper rules adopted by the board, any court would hold that it was a violation of the statute or prohibited by the constitution.

Corporal punishment when applied on the body of persons, on the outside of some part of their clothing, in a proper spirit, by legal authority, and for the purpose of correcting and reforming the individual, and

deterring others from committing like offenses, has been uniformly sustained by the courts.

The statute provides that persons offending shall be punished "in such manner and under such regulations as shall be adopted by the Board of Inspectors."

The object is that all punishment shall be, as near as may be, uniform and administered under regulations and according to authority.

When you have the proper direction of the board, it is my opinion that you can with impunity, within the limits above mentioned, use "the paddle" as a means of administering corporal punishment.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Duties of school officers—Drawing and payment of school orders.

It is the duty of the director to draw orders for all moneys raised for school purposes and present them to the moderator for signature. It is the duty of the assessor to go to the director to get the orders.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 27, 1891.

G. F. BARKER, ESQ., *Benzonia, Mich.:*

DEAR SIR—Your favor stating that "the assessor and director of school district No. 6 of the township of Benzonia, county of Benzie, are at loggerheads in regard to the question whether it is the duty of the assessor to call on and demand the orders of the director, or the duty of the director to deliver the orders to the assessor after they have been duly executed by the director and moderator" is received and considered.

It is my opinion that it is the duty of the director to draw the orders for all moneys raised for school purposes and present them to the moderator for signature, and, after they are signed, on request of the assessor, the director should deliver them to him.

The law makes it the duty of the assessor to pay orders drawn on him, and he is custodian of the district moneys. It is, therefore, his duty to draw all moneys from the township treasurer. He can not draw the moneys without the orders. As it is his duty to have these moneys in his possession for the benefit of the district, it would be an implied duty on his part to go to the director and get the orders and draw the money out of the township treasury; and if the director has the orders ready when called upon by the assessor, I think he has done all that the law requires him to do.

Respectfully yours,

A. A. ELLIS,
Attorney General.

Power of a director and school board to purchase charts.

Under section 48 of the General School Laws of 1889, neither the director nor the school board have any authority to purchase charts without a vote of the district authorizing the same.

The fact that an agent has the names of a majority of the district asking for the same, has no legal effect in the matter.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 29, 1891.

JOHN BARNHARD, ESQ., *Director, Hesperia, Mich.:*

DEAR SIR—Your favor stating that "an agent for a set of charts has made the canvass of your school district, and obtained the signatures of a majority of its members to a paper in favor of buying his charts," and asking my opinion "whether the district board has a legal right to purchase such charts without calling a special school meeting," is received and considered.

It is my opinion that the district board has not the right to purchase charts for the benefit of the school, unless they are ordered by a vote of the district.

Prior to the present school law, when it was provided that the director should furnish the necessary appendages for the school house the Supreme Court of this State, in the case of Gibson vs. School District No. 5 of Vevay, reported in the 36 Mich., 404, held that charts were not necessary appendages for the school house within the meaning of the law.

That case was decided in 1877. Subsequently in 1881 the school law was amended, and section 48 of the General School Laws, after giving the director authority to purchase appendages for the school house, contains this proviso: "*Provided*, That nothing herein contained shall be construed to authorize the director to purchase charts or any apparatus to be used in the school room without a vote of the district authorizing the same."

The duty to furnish appendages to the school room under section 48 of the General School Laws, as above stated, devolves upon the director.

Where the school is changed into a graded school section 108 provides that the board "shall annually elect from their own number, a moderator, a director, and an assessor * * * * who shall perform the duties prescribed by law for such officers in other school districts in this State, except as hereinafter provided."

Section 109 provides for the duties of the board, but it does not contain any clause limiting or abridging, in any manner, the authority of the director to purchase the appendages for the school house; therefore, whether it would be an ordinary primary school or a graded school neither the director nor the board would have any authority, under the provisions of section 48, to purchase charts without a vote of the district authorizing the same.

The fact that the agent has the names of a majority of the district, asking for such purchase, has no legal effect in the matter whatever, as the law has pointed out specifically what authority might be given.

Respectfully,
A. A. ELLIS,
Attorney General.

Right of presiding officer to vote—When there is a tie vote, motion is lost.

A chairman of a township board can vote upon all questions, even if by so doing he creates a tie.
He cannot vote a second time as chairman and break the tie. When there is a tie vote the motion is lost.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, July 29, 1891.

J. M. SMITH, ESQ., *Woodland, Mich.:*

DEAR SIR—Your favor asking me the following questions is received. The questions are repeated and answered as follows:

1. "Can a chairman of a township board vote upon all questions, if by so doing he creates a tie?" Answer: Yes.

2. "Can he vote a second time as chairman and break the tie?" Answer: No.

3. "In case the tie can not be broken, is the motion lost?" Answer: Yes.

Very truly yours,
A. A. ELLIS,
Attorney General.

Taxes—Voluntary payments—Charges.

Any one has the right to pay his taxes after July 1st and before sale.
Before a petition is filed for its collection, he must pay one per cent per month till the time of payment, and four per cent collection fees. After a petition is filed, the interest should be computed to the time fixed for the sale.
Payment after July 1st, but before thepetition is filed, is deemed voluntary payment.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 1, 1891.

H. G. DOZER, ESQ., *Prosecuting Attorney, Cheboygan, Mich.:*

DEAR SIR—Your favor of July 29, asking for my opinion in regard to the construction to be placed upon section 52 of Act No. 195 of the Public Acts of 1889, is received and considered.

I repeat your question: "If one desires to pay his tax after July 1st, or after the petition of the Auditor General is filed, is the interest thereon collectable up to the *date of payment*, or *time fixed for the sale?*"

It is my opinion that any person has a right to pay his taxes at any time after July 1st, and before a petition is filed in the Circuit Court for the collection thereof, by paying one per cent per month till the time of payment, and four per cent collection fees.

Section 49 of said act gives the treasurer authority to receive the tax, and section 74, after providing for adding interest at the rate of one per cent for every month, or part of a month, and four per cent collection fees, further provides: "No other charges shall be added to any tax voluntarily paid, either to the Township Treasurer, the County Treasurer, or the State Treasurer, except the expense after it accrues under section 52 of this act."

You will observe by an examination of section 52 that it provides for

an expense of "one dollar for the cost of advertising and other expenses of the sale;" and I believe that such expense is the sum referred to, that is authorized to be added after the petition is filed by virtue of said section 74.

It is my opinion that a payment made before a petition is filed, although it is after the first day of July, is a voluntary payment.

Second, After a petition is filed and proceedings commenced to foreclose for the lien, it is my opinion it was the intention of the Legislature to collect the whole amount, that is, the interest computed to the time fixed for the sale.

The only provision providing for any less payment is the clause above quoted from section 74, providing for "voluntary payments"; and where suit is commenced against any person to collect a tax, it cannot be said that the payment was voluntary.

The Supreme Court in the case of the Auditor General vs. McLaulin, 47 N. W. Rep., 233, in discussing the question relative to the payment of the one dollar after July 1st, and before the petition is filed, held that the one dollar would not be payable until proceedings had actually been commenced, and say "before that payments are voluntary;" hence, as above indicated, I would divide your question into two parts, and my answer would depend upon the fact as to whether the petition had been filed or not, as above stated.

Respectfully,
A. A. ELLIS,
Attorney General.

Noxious weeds—Definition of—Plank road companies—Right of way—Easements.

Noxious weeds are such as possess no particular value, and destroy and choke out grass and other herbs of value.

Under Act 150 of the Laws of 1891, it is the duty of plank road companies to cut all weeds on their right of way between their fences.

Where plank road companies have simply a right of way for road purposes, adjacent fee owners may use the land in such right of way for any purpose not inconsistent with the purposes of the road.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 3, 1891.

O. POPPLETON, ESQ., *Secretary of Detroit & Birmingham Plank Road Company, and Detroit & Pontiac, Birmingham, Mich.:*

DEAR SIR—Your favor of July 30, asking a "construction of certain parts of the act requiring all gravel and plank road companies doing business in this State to cut and destroy all noxious weeds growing on the lands occupied by them," is received and considered.

In reply I would say:

First, That the act to which you refer is Public Act No 160 of the Laws of 1891. Approved June 24, 1891. It was ordered to take immediate effect.

It provides: "That all gravel or plank road companies doing business in this State shall, between the fifteenth day of June and the first day of

July, and again between the fifteenth day of August and the first day of September in each year, cause all noxious weeds growing on the lands occupied by them in any village or organized township of this State, to be cut down and destroyed."

Second, "Noxious weeds," as I understand the definition, are weeds which possess no particular value in themselves, and are hurtful and destroy or choke out grass and other herbs that are of some value.

It was the intention of the Legislature to include under the head of noxious weeds all weeds that spread and that are hard to eradicate from the soil.

Included among noxious weeds, without any question, are thistles, milkweed, ragweed, mayweed, redroot, burdock, red and yellow dock.

You mention in your letter nervine and boneset, golden rod and cat tails. I am not acquainted with the weeds you call nervine and golden rod, and my judgment would not be of any valve as to whether or not these two weeds would be included. If they are of the class of weeds which spread and choke out the grass and annual crops of the farmer by reason of their rapid growth, I should have no doubt that they are included.

Boneset, or thoroughwort, is the great Michigan medicine for fever and ague; and it would seem rather hard that a weed that has rendered such valuable service to the people of this State, should, after the forests have been cleared away and the malaria disappeared, now be designated by the Legislature as a "noxious weed." So far as I am concerned, I have rather a friendly feeling for this old, white-topped weed, and my recollection is that, when a farmer boy, I had no trouble whatever in eradicating that weed from the soil. If however in your locality it is hard to eradicate and spreads from your lands on to the neighboring lands to the annoyance and damage of the adjacent farmers, it would also be numbered, without doubt, as a noxious weed and should also be destroyed by your company.

Cat tails, which grow on low, wet ground and never spread or affect our farmer friends, certainly were not intended to be included as noxious weeds.

Third, I believe it was the intention of the Legislature that you should cut all of the weeds on your right of way, that is, between your fences. You occupy all of the land for the purposes of your road, and had it been the intention of the Legislature to limit you to your road bed, they would have used different language than that used in the statute.

Fourth, Concerning your fifth question relative to the rights between yourselves and the adjacent owners, they must be construed entirely by the nature of your title. If you have simply a right of way for road purposes, the man who owns the fee probably might have a right, if he saw fit, to use the land for any purpose not inconsistent with your road for road purposes. But these matters submitted in your fifth question can have no relation whatever to the construction to be placed upon Act No. 160 of the Session Laws of 1891, and I do not desire to give you any definite answer as to your fifth question without knowing the nature of the title in dispute and other matters bearing upon your organization.

Very truly yours,

A. A. ELLIS,

Attorney General.

Incompatibility of offices—Office of supervisor and county school commissioner incompatible—De facto officers—Quo warranto.

A supervisor may be elected to the office of county school commissioner if he is otherwise qualified, but by reason of the incompatibility of the two offices, he *ipso facto* vacates the first upon the acceptance of the other.
The acts of an acting supervisor are valid, and cannot be collaterally attacked.
A person continuing to exercise the functions of two incompatible offices should be proceeded against by *quo warranto* to vacate the first office.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 8, 1891.

WILLIAM F. DEVLIN, ESQ., *Hillman, Mich.:*

DEAR SIR—Your favor of August 3, stating that "at the June term, the Board of Supervisors in compliance with the new school law, elected one of its members school commissioner for the county, without first resigning his former office, and has not resigned as yet," and "at the same session the board, including this member, voted to make the salary $500 per year;" and asking "Can he legally hold this school office, and is his vote upon the salary constitutional?" is received and considered.

First, There is no statutory or constitutional prohibition forbidding a supervisor to hold the office of county school commissioner, and if a supervisor is otherwise qualified, he might be elected to the office of county school commissioner. But if a supervisor accepts the office of school commissioner, he necessarily vacates the office of supervisor.

Section 10 of Act No. 147 of the Public Acts of 1891 provides that the compensation of the Commissioner, with certain limitations, shall be fixed by the Board of Supervisors; that the necessary contingent expenses of the Commissioner, within a certain limit, shall likewise be allowed by the Board of Supervisors.

It is not the policy of our law to allow a man to hold an office by which he can determine his own compensation.

It is a well established rule of the common law that one, who while occupying one office accepts another incompatible with the first, *ipso facto,* absolutely vacates the first office, and his title is thereby terminated without any further act or proceeding.

The following authorities hold that where an incompatibility exists between two offices, one man cannot hold the two.

Stubbs vs. Lee, 64 Me., 195.
People vs. Hannifan, 96 Ill., 420.
State Bank vs. Curran, 10 Ark., 142.
Cooley's Con. Lim. 748, Note 1.
Mechem's Pub. Offices & Officers, Sec. 420.

Incompatibility between two offices is defined to be an inconsistency in the functions of the two. It is likened to a man acting as a judge in his own case. In this case, if the Commissioner was allowed to occupy two offices, to-wit: supervisor and school commissioner, he must assist in auditing his own accounts and in fixing the amount of his own salary; and while he is not prohibited by the statute or the constitution by express words from holding these two offices, he is certainly prohibited from holding both by reason of their incompatibility.

Second, While as a matter of law the offices of supervisor and school

commissioner are incompatible, and one man would not be allowed to legally hold both offices, yet the question presented by the inquiry as to what the result would be if he exercised both offices must be settled upon a different theory.

It is a well established principle that the right to hold office can not be collaterally attacked while one is actually in office and assumes to exercise the rights and perform the duties of the office, and is recognized as such by the public, and in this case, by the other members of the Board of Supervisors, he is an officer *de facto*, and the acts and doings of an officer *de facto* are valid and cannot be collaterally attacked. The following authorities fully sustain the above doctrine:

Benoit vs. Auditors of Wayne Co., 20 Mich., 176.
Desmond vs. McCarthy, 17 Iowa, 525.
State vs. Williams, 5 Wis., 308.
Doty vs. Gorham, 5 Pick., 487.
Leach vs. Cassidy, 23 Ind., 449.

In the case of Benoit vs. Auditors of Wayne County, above cited, the Court held that: "A person actually in office with the legal *indicia* of title is a legal officer until ousted, so far as to render his official acts as valid as if his title were not in dispute."

While the doctrine is laid down that a person by reason of accepting the latter office would surrender the former in case of incompatibility in office, yet if the officer continues to exercise the functions of both offices, the only remedy given is to proceed against the officer by *quo warranto* to remove him from the first office, which in this case would be that of supervisor.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Election of school trustees—Irregular balloting.

Where the law providing for the election of school trustees requires that the polls shall be open at seven o'clock P. M., and shall continue open until 9:30 in the evening, an election had where a ballot was taken, the box opened, the ballots counted, and the person who received the highest number of votes declared elected, and then a second ballot being taken and the person receiving the highest number of votes declared elected. *Held*, That if the polls were kept open the requisite time during the first election, the two persons receiving the highest number of votes were elected, and that the person voted for the last time was not elected.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 8, 1891.

L. E. WICKENS, ESQ., *Secretary of the Board of Education, Holly, Mich.:*

DEAR SIR—Your favor stating that in the election of your trustees "a ballot was taken for one trustee, the box opened, said ballot counted, and the person who received the highest number of votes was declared elected. A second ballot was taken in the same manner for a second trustee," and asking whether those two persons are legally elected trustees, is received and considered.

Section 17 of Act No. 448, an act entitled: "An act to incorporate

the public schools of the village of Holly, Oakland county, Michigan," provides: "The clerk of the election shall keep a poll list, which shall contain the names of all the electors voting at such election, and at the close of the polls the inspectors shall immediately proceed to canvass and ascertain the result of the election, which canvass shall be public, and the two persons found to have received the largest number of votes at such election shall be deemed duly elected trustees."

Section 13 of the same act provides: "Said polls shall be open at seven o'clock P. M., or as soon thereafter as may be, on the day of the annual school meeting, and shall continue open until 9:30 o'clock in the evening."

The object of this law is, as plainly expressed, that two men are to be elected at the same time. "The two persons found to have received the largest number of votes at such election shall be deemed duly elected trustees."

There is no authority in the law for opening the ballot box until 9:30 in the evening, and there is no authority for voting two separate times at the same election. If there are to be two persons elected, their names should be placed upon the same ballot, in the same manner that a man would vote for constables at a spring election, and when the votes are counted the two persons receiving the highest number of votes should be declared elected.

It is my opinion that your manner of election was unauthorized by law, and if the polls were closed before 9:30 o'clock neither of the persons were legally elected; if on the other hand, the polls were opened at the proper time, and were not closed until 9:30 o'clock in the evening the first time, then it would be my opinion that the two persons who received the highest number of votes were elected and the person voted for the last time was not elected.

Respectfully,
A. A. ELLIS,
Attorney General.

Authority of Common Council — Expense of prosecuting for violations of the liquor law.

The charter of the village of Olivet gives the Common Council ample authority to control, at least within the general law, the sale of intoxicating liquors, and, therefore, gives the Council authority to use the village money to defray detective expenses in securing evidence of the illegal selling of liquor in said village.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 8, 1891.

DR. CHARLES H. MEAD, *Olivet, Mich:*

DEAR SIR—Your communication including the charter and ordinances of Olivet, without any index or side references, is received.

Section 31 among other things provides that "the Common Council shall have power by such regulations as they may deem desirable and proper within said village, to prevent vice and immorality, to preserve public peace and good order, to restrain and apprehend and punish drunk-

ards and disorderly persons; to prevent and regulate the selling or giving away of any spirituous or fermented liquors, etc."

Section 7 of ordinance 7 contains a prohibition against keeping saloons open on the first day of the week, and I do not know what other regulations or instructions the Common Council may have given its marshal relative to these matters. The charter certainly gives the Common Council ample authority to control, at least within the general law, the sale of intoxicating liquors; and the power to do these things necessarily includes the power to use the necessary money of the taxpayers of the village of Olivet to secure that end. To say that the Legislature granted the authority to do it, and at the same time did not give them the right to control the means to do it would be a construction entirely unsupported by the uniform holdings of the courts.

I have no doubt whatever that the charter of your village gives the Common Council of said village authority to use the village money to defray detective expenses in securing evidence of the illegal selling of liquor.

Respectfully,
A. A. ELLIS,
Attorney General.

Marriage certificate—Evidence.

If a marriage certificate is not in conformity with the marriage license, it is the duty of the minister who made the mistake to correct it, and such mistake will not in any manner affect the legality of the marriage.

Marriage is a question of fact, and could be proven, although no certificate had been given.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 8, 1891.

W. MASON, ESQ., *Milwaukee, Wis.:*

DEAR SIR—Your favor of August 3, stating that "in August of last year you were married to one Ida May Camp at Ionia, and that in making out the marriage certificate the minister erroneously made it read Ida May Mason, the license being issued in the proper manner;" and asking whether in my opinion "the certificate would stand in law and the marriage be legal, and if the minister who performed the marriage could upon request make out a new cartificate in lieu of the old one," is received and considered.

The certificate is not in conformity with the license granted, and it would be the duty of the minister who granted the certificate to issue one in conformity with the license granted. The marriage is perfectly legal, and the fact that the minister made a mistake does not affect it in the least. The marriage is a question of fact and could be proven although no certificate whatever had been given.

In issuing a new certificate and having it recorded, have the minister insert a clause like this—"This certificate is issued in lieu of the one issued on the — day of August, 1890. In the former certificate, by mistake, the name Ida May Camp was inserted as Ida May Mason. The name should have been Ida May Camp as herein stated."

Very truly yours,
A. A. ELLIS,
Attorney General.

Justices of the peace—Term of office.

Justices of the peace continue in office until their successors are elected and qualified, unless they resign such office.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 8, 1891.

JOHN C. LAWRENCE, ESQ., *Benton Harbor, Mich.:*

DEAR SIR—I received a letter from G. N. Valentine relative to your township board stating that "one Kennedy was elected justice of the peace for Benton township to succeed Tabor, but Kennedy did not qualify," and asking in substance whether or not Tabor would hold over.

Mr. Valentine does not state whether or not by reason of the incorporation of the city of Benton Harbor, Mr. Tabor would remain in the township or is placed in that portion constituting the city.

If Mr. Tabor is a citizen of that portion remaining as a township there is no question but what under article 6, section 17 of the constitution, he would continue in office until his successor was elected and qualified, if he does not resign; and if Mr. Kennedy did not qualify, Mr. Tabor would still be in office and legally qualified to act.

Very truly yours,
A. A. ELLIS,
Attorney General.

Construction of statute—Prison physicians—Right to practice.

Under section 9752 of Howell's Statutes, the prison physician of the State House of Correction at Ionia, is not prohibited from setting a broken limb, giving physic to the sick, or giving other medical attendance to his fellow citizens who may ask it, so long as such practice does not interfere with the duties which he owes to the State as such prison physician.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 11, 1891.

HON. EUGENE PARSELL, *Warden of the State House of Correction and Reformatory, Ionia, Mich.:*

DEAR SIR—Your request for a construction of section 9752 of Howell's Annotated Statutes, and asking my opinion relative to its bearings on the

physician of the institution over which you preside, is received and considered.

The section reads: "Neither the warden, nor any other officer appointed by the warden and managers, except the treasurer, shall be employed in any business for private emolument, or which does not pertain to the duties of his office."

This section must be read in connection with the balance of the chapter governing the officers of the State House of Correction and Reformatory.

The especial duties of the physician are found in section 9775 of Howell's Statutes, which is as follows: "It shall be the duty of the physician of the institution:

"*First*, To attend at all times to the wants of the sick inmates, whether in the hospital or in their cells, and to bestow upon them all necessary medical service;

"*Second*, In company with the hall master, to examine weekly the cells of the inmates, ascertain their state of cleanliness and ventilation, point out any defects in these particulars to the warden, and report in writing their condition monthly to the managers, or oftener if he deem necessary;

"*Third*, To prescribe the diet of sick inmates, and his directions in relation thereto shall be strictly followed, and to be present and superintend all corporal punishments which may be inflicted in the institution;

"*Fourth*, To keep a daily record of all admissions to the hospital, the disease for which admitted, and of cases treated in cells or elsewhere, giving color, nativity, age, occupation, habits of life, crime, period of entrance and discharge from the hospital;

"*Fifth*, To make a yearly report to the managers of the sanitary condition of the institution during the year, which report also shall contain a condensed statement of his daily record;

"*Sixth*, To make all such other reports as the managers may from time to time require."

In addition to the above section, section 9757 makes it "the duty of the managers to make and adopt general rules for the government and discipline of the institution, and of the officers thereof, as shall be necessary and not inconsistent with the provisions of the statute, and from time to time to change and amend them as circumstances may require."

Hence in addition to the requirements of section 9775 it would be the duty of the physician to obey all reasonable regulations prescribed by the Board of Managers.

The object of these several provisions is to secure to the State of Michigan the personal services of the several officers employed in the institution. The statute must have a reasonable construction. It does not mean that if the warden appointed should chance to be a farmer, that he must sell or give away his farm; that if the hall master was a miller, that he must suspend all operation of his mill; or that the chaplain should be prohibited from attending prayer meeting save at the House of Correction.

The statute means this: That the first service from a man in the employment of the State shall be given to the State, and that he shall always be ready to answer the calls of the State, and when he has done this he has done all that the statute requires.

The statute was not passed for the protection of outsiders, but for the benefit of the State of Michigan, and when any officer of the State performs the duties prescribed by the statute, and is ready on call at any time to

attend to the extra duties that may devolve upon him by reason of his appointment, he has performed all that the statute requires.

It will readily be seen that no man under the above restriction could carry on any business as a business if his first duty was to the State of Michigan.

If a doctor carries on a business as a doctor he must necessarily attend to all calls. Much of the practice of medicine requires the constant and personal attendance of the physician. Many appointments are made in advance which are to be attended to at short notice; and of course a person whose first duty was to the State of Michigan would be prohibited under the statute above quoted from entering into the business of the practice of medicine as a business, for the simple reason that where a call was made upon him by the State that call must, in all cases, be first attended to, while in ordinary cases the general rule is "the first there, the first served."

But the law does not mean that a doctor who is employed for the State, and who has performed all the duties required by the law and the rules of the board, and when there is no call whatever upon him by that institution, shall be prohibited from setting a broken limb, giving physic to the sick, or other medical attention to those of his fellow citizens who may ask attention at his hands.

It will be noticed that the duties prohibited are those which do not pertain to the duties of his office. Any one who is at all familiar with the practice of medicine, the practice of law, or any other science, must admit that every case that is attended to by the active practitioner makes him more competent and his services more valuable.

It would not be profitable to the State of Michigan to discourage investigation and active practice on the part of the physician in the employment of the State, so long as such practice is not inconsistent and does not interfere with the duties which such physician owes to the State.

As I have already said these regulations are made for the benefit of the State of Michigan and not for the benefit of outside parties whose only interest is to secure to themselves some personal employment.

The technical reading of section 9752 would absolutely prohibit any officer from doing anything for the improvement of either his body or his mind, unless it pertained directly to the duties of his office, and such was not the intention of the Legislature.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Term of office of school officers—Changing time of school meeting.

The school district has authority to shorten or extend the term of office of any school officer, by changing the time of the annual school meeting from September to July, and the term of office of any school officer which would expire in September, had it not been for such change, would expire in August, and *vice versa.*

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 12, 1891.

HON. FERRIS S. FITCH, *Superintendent of Public Instruction, Lansing, Mich.:*

DEAR SIR—Your favor asking in substance what effect the change in the time of holding the annual meeting of the school districts from the

first Monday in September to the second Monday in July would have upon the term of office of the officers then in office, is received and considered.

This matter is covered by section 14 of chapter 2 of the General School Laws. That section provides that "The annual meeting of each school district shall be held on the first Monday of September in each year, and the school year shall commence on that day: *Provided*, That any school district that shall so determine at an annual meeting, or at a special meeting duly called for that purpose, may hold its annual meeting on the second Monday in July of each year, or in the same manner may hereafter change the time of its annual meeting to the first Monday of September in each year, and the *trustees and officers of the district shall date their term of office from the date so chosen*, and until their successors are elected and qualified."

The Legislature in passing this section gave the school district authority to shorten or extend the term of office of any officer then in office, if they desired so to do, by changing the time of the annual school meeting.

If the school district voted to change from July to September any officer whose term of office would expire on the second Monday in July, would not then expire until the first Monday in September, and if the district should change from the first Monday in September to the second Monday in July, then the term of office of any officer whose term of office would expire, had it not been for such action in September, would expire by virtue of the vote of the district on the second Monday in July.

The intention of the Legislature is plainly expressed in the words found in the section as follows: "And the trustees and officers of the district shall date their terms of office from the date so chosen," that is, the date named by the district when the school year shall commence.

It was not the intention of the Legislature to have two directors at the same time, and if that was not their intention, then certainly the term of the officer who was in office at the time of the change must terminate at the commencement of the new period as the new officer must date his term of office from the date so chosen.

It would be the duty of the old officer, where the time was changed from September to July, on the qualification of his successor, directly after the meeting in July, to deliver to such successor all books and papers appertaining to his office.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Special elections—Voting upon questions of raising money.

Special elections, upon the question of raising money come within the purview of Acts 190 and 194 of the Public Acts of 1891, and booths should be provided as in other elections.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 15, 1891.

C. S. REILLY, ESQ., *Cheboygan, Mich.:*

DEAR SIR—The general election law, Act 190, section 14, provides that all "constitutional amendments or other questions to be submitted to the electors of the State for popular vote shall be printed on the ballot, etc."

Section 1 of Act 194 provides "That all elections hereafter held in the various cities, villages and townships in this State, shall be in conformity with the provisions of the laws governing general elections so far as the same shall be applicable thereto, and all the provisions of such laws relative to the boards of election inspectors, the arrangement of polling places, the manner of voting and receiving votes, and the canvass and the declaration of result of such election, are hereby made applicable to such municipal and township election."

Under these laws, I am of the opinion that the voting upon the question of raising money comes within the purview of the law, and that booths should be provided as in other elections.

Respectfully,
A. A. ELLIS,
Attorney General.

Game law—Open season—Words in brackets—Upper Peninsula.

Under the law providing that game may be killed from September 1st to November 1st, persons would not have the right to kill game on the first day of September, the word "from" being used as a term of exclusion; but they might lawfully kill game on the first day of November, the words "to," "till," or "until" being words of inclusion.

Where the word "only" was omitted in an act as signed by the Governor, but was in the original act as passed by the Legislature, it may assist in arriving at the intention of the Legislature, although it has no place in the statute.

Under Act 152 of the Laws of 1891, there can be only one open season for hunting game in the Upper Peninsula.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 18, 1891.

HON. CHAS. S. HAMPTON, *State Game and Fish Warden, Petoskey, Mich.:*

DEAR SIR—Your favor asking my opinion concerning the construction to be placed on certain game laws, is received.

To your first question, viz:

"Where the law says that game may be killed from September first, to November first, can game be killed both on the first of September and the first of November?" I reply, no.

The word "from" is a term of exclusion. When the words "from the first of September" are used, the open season would commence at midnight of the first of September, or in other words, persons would not have a right to kill game on the first of September.

Peable vs. Hanford, 18 Maine 106.
Sutherland on Statutory Construction, 137.
Bemis vs. Leonard, 118 Mass. 502.

"To," "till" or "until" are used as words to include or inclusive, and to the first day of November would include November first, and persons could shoot game on that day.

Sutherland on Statutory Construction, 137.
Thomas vs. Douglass, 2 John. Cases, 225.

Second, Relative to Act 152 of the Session Laws or 1891, as to the effect of the omission in the last line of section 1, of the word "only," and whether by reason of the omission of that word in the line there would be two hunting seasons in the Upper Peninsula, I would say that the word "only" was in the original law as passed by the Legislature, but by mistake it was omitted from the enrolled copy; while the law, as signed by the Governor, must control, yet this law as it now reads might be construed to give persons in the Upper Peninsula two hunting seasons or to limit them to one, according as you may interpret the law. It is therefore a question of construction; what was the legislative intent? The law being indefinite, we have a right to examine the journals and the act as passed to ascertain their intention; and from such examination it is clear that the Legislature intended to give but one season to the hunters of the Upper Peninsula under this law.

I therefore give it as my opinion that you should construe the law and enforce it the same as though the word "only" appeared in the last line of section one.

Respectfully,
A. A. ELLIS,
Attorney General.

Institute fees—Mandatory statutes.

The law of 1877 requiring an institute fee to be paid by all applicants for license to teach is mandatory. Said act applies to all schools connected with our school system and which receive a part of the "primary school institute fund."

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 19, 1891.

E. A. WILSON, ESQ., *Secretary Board of School Examiners, Tecums Mich.:*

DEAR SIR—Your favor asking whether, in my opinion, the law requiring an institnte fee to be paid was mandatory and applied to schools organized under a special charter, like Adrian city schools, is received and considered.

The laws relating to our free schools must all be interpreted together. They are a part of one system.

Section 154 of the General School Laws was section 1 of Act 53 of the Laws of 1877, entitled "An act to provide for the better support of teacher's institutes" and to repeal certain laws relating to the same subject. The title of the act is broad enough, and section 1 of the act as originally passed provides in terms "that all school boards or officers, authorized by law to examine applicants for license to teach, or to give certificates of qualification to teachers, shall collect" this fee. The law was subsequently amended by providing further that directors and secretaries who should contract with teachers who had not paid the institute fee, should collect the same.

In 1881, by virtue of Act No. 164, by which the various general laws

were revised and consolidated, Act 53 of the Laws of 1877 was placed under a general head with the remainder of the general laws.

It does not seem to me that the fact that this act was consolidated with others would relieve any board or officers from obeying its mandate.

Act 164 of the Laws of 1881 does not purport to be a new law, but a revision and consolidation of the old laws. It is entitled "An act to revise and consolidate the laws relating to public instruction and primary schools."

The institute fee is a *per capita* tax or uniform fee on certain individuals engaged in a particular calling; the money being used to educate these persons and make them more proficient in this calling.

All teachers are in a public employment, and if it is necessary for the public good that teachers who are examined by county boards of school examiners shall attend teachers' inititutes, it is just as necessary that teachers who are supported and paid in part by the State's money, and are connected with the same system of schools, should attend the same institutes.

The Adrian school board is covered by the language used in Act 53 of the Laws of 1877, and the teachers teaching in that school come within the reason and purpose of the law.

It is my opinion that the law is mandatory and that it applies to all schools like Adrian schools organized under special acts, but connected with our free school system, and which receives part of the "primary school interest fund."

Respectfully,
A. A. ELLIS.
Attorney General.

Right of township clerk to vote with town board.

A township clerk has a right to vote on all questions arising before the township board, unless he is disqualified by reason of some personal, or other special interest.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, August 29, 1891.

CHAS. H. WELSH, ESQ., *Vienna, Mich.:*

DEAR SIR—Your favor of August 25 at hand. A township clerk is by by law constituted a member of the township board. Section 744 of Howell's Statutes. He is entitled to vote on all questions that may arise before such board, excepting when he is disqualified by reason of some personal interest, or for some other special reasons.

Respectfully,
A. A. ELLIS,
Attorney General.

Examination of juvenile offenders—Manner of procedure.

In case of a felony in proceedings against a child under sixteen, the examining court should proceed with the examination the same as with an adult person, and if the respondent is bound over to the Circuit Court, then that Court (having jurisdiction), should give notice to the County Agent and proceed according to section 9895 of Howell's Statutes.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE.
Lansing, August 29, 1891.

B. E. SHELDON, ESQ., *Hillsdale, Mich.:*

DEAR SIR—Your favor asking "What is the legal course for an examining court to pursue when it appears that the person arrested and brought before it on a warrant charging a felony is a lad under sixteen years of age?" is received and considered.

In case of a felony in proceedings against a child under sixteen, you should proceed with the examination the same as you would with an adult person, and if a crime has been committed, and there is probable cause to believe the respondent guilty, bind him over to the Circuit Court, and then that Court, having competent jurisdiction to try and dispose of the case, should give the notice to the County Agent and proceed according to section 9895 of Howell's Statutes.

Respectfully,

A. A. ELLIS,
Attorney General.

Indictment for rape—Joinder of counts—Evidence—Statutory offenses—Former jeopardy.

Where an information charges rape to which is added a count for carnal knowledge of a girl between the ages of fourteen and sixteen years, with her consent, although the offences charged were performed by the same act, they are absolutely distinct in point of law, and as the evidence to support one count would be diametrically opposed to the evidence necessary to establish the other, the Court should require the prosecutor to elect on which count he will go to trial.

Evidence of the statutory offense of carnal knowledge with consent, would be absolutely immaterial in the case of rape. An acquittal for either offense would be no bar to a prosecution for the other, as the statutory offense of carnal knowledge with consent is not included in that of rape.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, September 2, 1891.

W. A. HARRINGTON, ESQ., *Prosecuting Attorney, Gaylord, Mich.:*

DEAR SIR—Your favor stating that you have a person arrested charged with rape, to which you have added a count for criminally knowing a girl, theretofore chaste, of the age of fourteen years and not more than sixteen years, with the consent of such girl, and asking whether in my opinion you would be entitled to go to the jury upon both counts, was received and has been duly considered.

The offenses charged, although consummated by one single act, are

absolutely distinct in point of law. In speaking of the distinction between offences, Bishop in his Criminal Law, section 1051, says that "offenses are not of the same class; 1st, when the two indictments are so diverse as to preclude the same evidence from sustaining both; or * * * * 3d, when each indictment sets out an offense differing in all its elements from that in the other, though both relate to one transaction."

In this case the evidence that would support one count would be diametrically opposed to the evidence that would be necessary to establish the other.

In the lesser offense it would be necessary to prove not only that the girl was over fourteen years of age but that she was under sixteen, and also that she was chaste before this transaction, and that the act was committed with her consent. The latter item above enumerated; to-wit, the consent, is squarely opposed to the evidence that would necessarily be produced in a case of rape; while the other two, to-wit, that she was under sixteen and that she was theretofore chaste, are absolutely immaterial in the case of rape.

It will further be observed that one offense is not included in the other, that an acquittal for either offense would be no bar to a prosecution for the other offense.

I come to the conclusion from a careful examination of the authorities that, ordinarily the question of compelling a prosecutor to elect between different counts rests in the sound discretion of the Court.

A defendant ought never to be compelled to go to trial on charges, where making his defense on one count in the information, would embarass him as to the other counts in the same information. And it seems to me, in this case, that these offenses are so distinct in point of law, that the Court should, as a matter of right to the defendant, compel the prosecutor to elect on which count he will go to trial.

Whether the refusal of the Court to grant such a request would be held on exceptions to be error by the Supreme Court, I am not prepared to say.

It is the duty of the public prosecutor to see that the respondent has a fair trial, as well as to see that the laws are enforced.

It does not appear to me that a respondent could have a fair trial where he was charged with committing an offense by force and against the will of a certain person assaulted, and in another count of the same information he is charged with committing the same act without force and with the consent of the same person. There is too much danger in such a case that the admissions that might be made in the latter case would go much further than they were intended and be used to confound a man in his defense.

Our courts have been very liberal in allowing a prosecutor to add separate counts to the same information. But in nearly, or quite all of the cases that I have been able to find where this practice has been indulged, the evidence used to convict under one count, would be just as applicable and material to the trial under the other count, which is not the case with the two offenses charged in your information.

Some of the evidence would be absolutely opposed to that which would be necessary in order to claim a conviction under the other count; while under what might be styled the lesser offense, other and further proof must be made than what is required to be made for the greater offense.

I, therefore, give it as my opinion that, under the circumstances of the

case as you state them, exact justice would be done in the case at bar by trying the defendant for the lesser offense.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Board of public health in cities—Duties of in auditing accounts.

Where the charter of a city contains no provision to the contrary, the Common Council constitute the Board of Health and should audit accounts for services of persons in caring for small-pox patients, which account when presented to the Board of Supervisors of the county, should be allowed by them as a charge against the county.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 11, 1891.

C. S. REILLEY, *Cheboygan, Mich.:*

DEAR SIR—Your favor of Sept. 8th received relative to the claims of persons caring for small-pox patients.

If there is nothing in your charter to the contrary, or providing for a board of health, I think you would be governed by section 1681 of Howell's Statute's, which makes all of the provisions of chapter 39, which apply to townships, applicable to cities also, where their charters do not provide to the contrary.

I am of the opinion that your Board of Health, as constituted, should audit the accounts of the several parties, and then after they are so audited, so much thereof as is allowed should be presented to the Board of Supervisors at their annual meeting this fall to be audited and paid by the board as charges against the county.

This appears to be the course that is sanctioned in the case of Elliot et al. vs. Kalkaska Supervisors, 58 Mich., 452.

Respectfully,
A. A. ELLIS,
Attorney General.

Authority of school board to purchase free text-books—Time of purchasing.

When a district votes to have free text-books the district board should prepare an estimate of the amount necessary for the purchase of the same to be assessed upon the district in addition to the other sums.

The director should purchase the books on the first day of February after the tax has been assessed.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept., 11, 1891.

N. G. GREEN, ESQ., *Assessor of School District No. 1, Morley, Mich.:*

DEAR SIR—Your favor of Sept. 8, stating that the voters at your annual school meeting, voted to have free text-books, and asking if the board

would have authority now to raise the money to provide for the books, is received and considered.

The vote of the district adopting free text-books is all that would be necessary under the law. When that is done it is then the duty of the district board to prepare an estimate of the amount of money that will be necessary, as provided in section 209 of the General School Laws.

This estimate should be filed with the township clerk, and the township clerk will certify the same to the supervisor of the township to be assessed upon the district in addition to other sums.

Section 210 of the General School Laws provides that the director shall purchase the books on the 1st day of February, after the tax has been assessed.

Section 211 of the General School Laws provides a penalty against officers who neglect, after the district has voted to adopt free text-books, to purchase the books.

I think under the circumstances your board should make an estimate of the amount required, and see that the books are purchased after the tax is assessed.

Very truly yours,
A. A. ELLIS,
Attorney General.

Elections—Division of voting precincts.

Upon the division of any voting precinct containing over five hundred electors, it is the duty of the township board to prescribe the boundaries of the districts in such way as to them seems best.

Boards of canvassers must be appointed in such cases according to the provisions of chapter eight of Howell's Statutes.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE
Lansing, September 12, 1891.

JAMES SCHERMERHORN, ESQ., *Hudson, Mich.:*

DEAR SIR—Your favor relative to the division of your township into two or more polling places, stating the situation and asking the following questions:

First, "How will the location of said polling places be fixed?"

Second, "Whose duty will it be to locate them?"

Third, "Who appoints the boards of canvassers, and by what process?" is received and considered.

Your first and second questions are answered by section 4, Act No. 190 of the Public Acts of 1891. It provides: "When any election district or voting precinct shall contain over five hundred electors it shall be the duty of the township board in townships and the city council in cities to divide such voting precincts into two or more election districts."

This section gives the township board full power in the premises, and they can locate the districts as to them seems best.

Concerning your third question: The section above quoted (Section 4, Act No. 190 of the Public Acts of 1891) further provides: "In case of

townships and incorporated villages so divided the provisions of chapter eight of Howell's Annotated Statutes shall apply to and govern all proceedings hereunder, with reference to such division, boards of registration, election inspectors and all matters arising therefrom not provided for by this act."

Section 126 of said chapter eight reads as follows: "The township officers of said township, who, by existing laws, constitute the board of inspectors of election in said township shall be the board of inspectors of election in election district numbered "one" therein, and two justices of the peace and the treasurer of said township shall be the board of inspectors of election in election district number "two," and in case there shall be more than two election districts in any township the township board shall for the remaining districts appoint three freeholders, who shall be residents and qualified electors of the district in which they shall serve, to constitute a board of inspectors of election in such remaining district, and shall hold their office until their successors are elected and qualify, and shall be known as "district inspectors of election." The manner of such election of inspectors shall be by ballot as for township officers chosen by ballot, and the ballot shall contain the name of the person voted for and the words "Inspector of Election" added thereto, and the three persons receiving the highest number of votes in said district for said office shall be the board of inspectors of election for the ensuing year in such district, and until their successors are elected and qualify."

The sections above quoted, it will be seen, makes it obligatory upon the township board to attend to the matters mentioned in your questions.

Very truly yours,
A. A. ELLIS,
Attorney General.

Vacancy in office of township clerk—Powers of deputy.

Under section 743 of Howell's Statutes, the deputy township clerk does not become the clerk upon the death or other disability of the clerk. He only performs the duties of the clerk until the vacancy is filled by appointment by the township board.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 21, 1891.

F. A. ROETHLISBERGER, ESQ., *Allen, Mich.:*

DEAR SIR—Your favor stating that "your township clerk had recently died, and that at the time you were acting as his deputy, and asking whether you could appoint a deputy, and whether it was necessary for you to give a bond," is received and considered.

Section 743 of Howell's Statutes, making it the duty of the township clerk to appoint a deputy, whose duty it shall be in case of the absence, sickness or death or other disability of the clerk to perform the duties of such clerk, and receive the same compensation for performing the duties as the clerk would have been entitled to receive, does not make the deputy the clerk of the township; he is simply deputy clerk.

Section 728 of Howell's Statutes provides: "Every township office,

including the office of justice of the peace, shall become vacant, upon the happening of either of the events specified in chapter fifteeen, as creating a vacancy."

The chapter referred to in this section has reference to the Revised Statutes of 1846, which would be chapter eighteen of Howell's compilation.

Section 649 concerning vacancies, which is referred to in section 728, provides: "Every office shall become vacant upon the happening of either of the following events, before the expiration of the term of such office: 1. The death of the incumbent * * * "

Section 729 of Howell's Statutes provides: "Whenever there shall be a vacancy, or when the incumbent shall, from any cause be unable to perform the duties of his office, in either of the township offices, except that of justice of the peace and township treasurer, the township board may make temporary appointments of suitable persons to discharge the duties of such offices respectively; and such persons so appointed, shall take the oath of office, or file the notice of acceptance required by law, and shall continue to discharge such duties until the office is filled by election, or until the disability aforesaid be removed."

Under the above statute it would be the duty of your township board to appoint a township clerk.

Respectfully,
A. A. ELLIS,
Attorney General.

Hawkers and peddlers—Licenses—Patent medicines.

Manufacturers of medicine are not required to pay a State license as hawkers and peddlers, in order to sell their goods.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 21, 1891.

HON. A. D. GARNER, *Deputy State Treasurer, Lansing, Mich.:*

DEAR SIR—Your favor enclosing a copy of the contract made by Messrs. Northrop & Robertson, of Lansing, Mich., with their salesmen, and asking my opinion as to whether or not they should pay a State license as hawkers and peddlers, by reason of doing business as is provided in their contracts, is received and considered.

The contract enclosed reads substantially as follows:

"*Lansing, Mich., Sept. 17, 1891.*

"Northrop & Robertson, of Lansing, Michigan, do hereby grant unto A. B. the exclusive right of canvassing for the sale of such medicines and preparations as are manufactured by them, within the county of....., for the term of one year, and said A. B. promising to thoroughly canvass such territory at least twice in each year, that he will not sell or handle any other medicines, or directly or indirectly trespass upon any other territory, nor disclose the terms of this contract or the price of medicines and remedies sold hereunder, it being hereby agreed that the title to all medicines delivered to said A. B. shall remain with Northrop & Robertson, and that all sales made are made for them.

"In witness whereof, etc."

Messrs. Northrop & Robertson are manufacturers of medicine, at Lan-

sing, Mich., and under contracts with their agents as above set forth, sell their medicines throughout this State. In my opinion, they do not violate the law of this State relative to hawkers and peddlers by conducting their business as above set forth, without having their salesmen procure licenses as hawkers and peddlers.

Section 1263 of Howell's Statutes makes an exception in reference to manufacturers. Section 1263 is section No. 22 of the chapter relative to hawkers and peddlers, and as much of it as applies to the matter under consideration reads as follows: "Nothing contained in this chapter shall be construed to prevent any manufacturer * * * from selling his work or production, by sample or otherwise, without license."

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Taxation—Exemptions—Seizure and sale of personal property.

The law granting exemptions from taxation of certain property, does not extend to the seizure and sale of property to satisfy taxes lawfully imposed on property that can be legally taxed.

The personal property of the person taxed is the primary fund for its payment, and until that remedy is exhausted, no authority exists to go further.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 21, 1891.

VICTOR M. GORE, ESQ., *Buchanan, Mich.:*

DEAR SIR—Your favor requesting my opinion upon the question whether the property exempt under subdivision 6 of section 3 of the general tax law of 1889, is exempt from seizure and sale under section 34 of said tax law, upon the failure of any person to pay any tax lawfully assessed to him, and whether household property is liable to a seizure before the law will permit the taxes to be paid by a sale of the real estate of the taxpayer is received.

To your first question: Section 3 referred to only exempts certain classes of property from taxation.

Section 34 expressly provides that: "If any person shall neglect or refuse to pay any tax assessed to him, the township treasurer shall collect the same by seizing the personal property of such person, to an amount sufficient to pay such taxes, fees, and charges for subsequent sale, wherever the same may be found in the county, from which seizure no property shall be exempt."

The rule that permits a man's entire personal property to be taken from him by a tax collector is certainly a harsh one, but I am clearly of the opinion that any person refusing to pay his or her tax, which has been lawfully assessed against them, they cannot, under the statute, claim that the privilege of exemptions from taxation that the law has given them, extends to the seizure and sale of property to satisfy taxes lawfully imposed on property that can be legally taxed.

Exemptions are merely constitutional or statutory privileges, and although the Legislature has seen fit to exempt certain personal property

from taxation, they have, in just as clear and unambiguous terms expressed themselves as deeming it wise not to exempt any property from seizure and sale.

To your second question: The statute has made the personal property of the person taxed the primary fund for its payment, and has given a remedy for enforcing such payment from it. Until that remedy is exhausted, no authority exists to go further.

Cooley on Taxation, page 307.

Respectfully,
A. A. ELLIS,
Attorney General.

Selecting of petit and grand jurors.

Act 142 of the Public Acts of 1883, which is "An act to provide for selecting petit jurors in the Upper Peninsula," only repeals or supersedes section 7554 of Howell's Statutes so far as it relates to the selection of petit jurors in the Upper Peninsula, and leaves that section in force relating to the selecting of grand jurors.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 24, 1891.

W. F. RIGGS, ESQ., *Prosecuting Attorney, Manistique, Mich.:*

DEAR SIR—Your favor asking: "Has the board provided for in section 7630*a*, as amended by 3 Howell's Statutes 7630*a*, power to make a list of names of persons to act as grand jurors?" is received and considered.

Act No. 142 of the Public Acts of 1883 to which you refer, is entitled "An act to provide for selecting petit jurors in the Upper Peninsula." Its provisions repeal or supersede those of section 7554 of Howell's Statutes only so far as it relates to the selection of petit jurors in the Upper Peninsula, and leave that section in force relating to the selecting of grand jurors in the Upper Peninsula.

Respectfully,
A. A. ELLIS,
Attorney General.

Intoxicating liquors—Bonds—Place of business.

The particular place where the business is to be carried on must be specified in the bond, and when so specified, the business must be carried on at that place. The law will not permit a man to close up his place at one point, and while being so closed, carry on the business at another point, unless a bond is given for each place. If a bond is defective in describing the place of business, but is approved by the board, and filed by the County Treasurer, the person who gave the bond could not be held criminally liable for selling at his regular place of business.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 28, 1891.

F. B. DAVISON, ESQ., *Prosecuting Attorney, Big Rapids, Mich.:*

DEAR SIR—Your favor of Sept. 23, asking "whether a liquor bond would be valid if the place of business was described as Big Rapids, and

the street, ward and name of the building omitted? and, second, if the bond was valid could a dealer do business at any other place in said city, closing his regular place during the same time?" is received and considered.

First, The question as to the description of the place is not left for me to construe, as our Supreme Court has already passed upon that question. See People vs. Brown, 48 N. W., Rep. 159. The Court said: "The particular place where the business is to be carried on must be specified and confined to that place."

The bond you suggest simply designating "Big Rapids" as the place does not specify the particular place, and such a bond ought not to be accepted by the city board or filed by the County Treasurer, but if it is accepted and filed another question would arise relative to the rights of the liquor dealer under such bond.

It does not seem to me that under the statute which makes it the duty of the board to pass upon the sufficiency of the bond, a person who had given a bond with such a general description (the bond having been accepted and filed) could be held criminally liable for selling at his regular place of business. It is my opinion that, until notified to the contrary, a person giving such a bond would be justified in doing business at his regular place of business. The commencement of his busineas at such place would be deemed an election on his part to designate the particular place intended by the board to be covered by the bond, and, having made that election, he would be bound by his choice in that regard; and hence, a dealer having elected to commence business at a particular place would not be allowed to close that place and commence at another place without executing and having accepted and filed a new bond.

To allow a person to do business in two different places under the same bond, although at two different times, would be a plain violation of the rule laid down by the Supreme Court in the case of the People vs. Lester, 45 N. W. Rep., 492, where it was held by the Court that a person could not, under Act No. 313 of the Public Acts of 1887, carry on the business of selling liquors at two or more different places by virtue of one bond.

It is reasonable to say that when a board accepted a bond, they intended that the dealer should do business in one place in Big Rapids, and he having selected that place and commenced his business, it would be nothing but common justice to protect him in the prosecution of his business, but it can not be said that the board intended he should go from place to place and transact business in different places. As soon as a dealer abandons his regular place of business and commences business at some other place, there is no equity longer existing in his behalf, and he would have to contend not only with the fact that the bond was not in the first instance what the law required it to be, but with the further fact that he had been doing business under the same bond, at a different place.

Respectfully,

A. A. ELLIS,

Attorney General.

English sparrows—Shooting at the trap—Statutes—Construction.

The law offering bounties for the killing of English sparrows, does not repeal the law for the more effectual prevention of cruelty to animals, and no person has a right to kill an English sparrow in the manner prohibited by section 9392 of Howell's Statutes. It cannot be said that because the Legislature has expressly provided that it shall be lawful to kill any bird or animal, that they intended thereby to repeal by implication the law relative to the prevention of cruelty to animals. Our courts do not favor the repealing of statutes by implication.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 29, 1891.

E. E. THRESHER, ESQ., *Editor American Warden, Kalamazoo, Mich.:*

DEAR SIR—In reply to your favor of Sept. 16th requesting my opinion upon the following question: "Is it lawful in this State to use English sparrows for live bird shooting at the trap?" I would say:

Section 9392 of Howell's Statutes provides: "Any person who shall keep or use * * * * any bird for the purpose of shooting or baiting, or as a target, or to be shot at, either for amusement or as a test of skill in marksmanship * * * shall, on conviction thereof, be adjudged guilty of a misdemeanor."

The above section is section 2 of Act No. 70 of the Public Acts of 1877, entitled "An act for the more effectual prevention of cruelty to animals."

The object of the above law is plainly expressed in the title. It has nothing whatever to do with the destruction or killing of any animal which is killed in the ordinary way by sportsmen or by other persons; and although section 1 of Act No. 152 of the Laws of 1889 offers a bounty for the killing of English sparrows, it does not repeal the above section or give any person the right to kill an English sparrow in the manner prohibited by section 9392 of Howell's Statutes.

These two laws were passed for entirely different objects: One to prevent cruelty to animals, the other to encourage the destruction of a certain kind of bird by any lawful means.

The Legislature of the State might be in favor of the destruction of English sparrows, and at the same time not desire that the sparrows should be killed in a cruel manner.

Other laws have been passed by the Legislature relative to the right to shoot different kinds of birds, and making it lawful to kill them at different times in the year, still it can not be said that because the Legislature has expressly provided that it shall be lawful to kill any bird or animal, that they intended thereby to repeal by implication the law relative to the prevention of cruelty to animals.

The courts of this State do not favor the repealing of statutes by implication, and the statute relative to the killing of birds by target shooting has not been repealed by express provision, and hence if repealed at all, could only have been repealed by necessary implication, by reason of the passing of a law allowing a bounty for the killing of English sparrows. In my judgment the two acts are perfectly consistent, the one with the other, and that no person has the right to kill English sparrows or use them as a target for live bird shooting at the trap.

Respectfully,
A. A. ELLIS,
Attorney General.

Residence—Intention—De facto officers—Acts are valid—Testing right to office.

The question of residence is one of fact, and is largely determined by the intention of the person.

A supervisor who was elected while he was absent from his township, and who honestly intends, when his job is finished, to return, cannot be removed from office on the ground that he was not a resident of the township at the time of his election.

If he was not legally elected to the office, but in fact occupies it, his acts would be valid in the eye of the law, and the taxpayers could not attack the roll spread by him on the ground that he was not legally qualified to hold the office.

The right to hold office can only be tested by a proceeding commenced against the officer himself.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Sept. 30, 1891.

AUGUST MILLER, ESQ., *Township Clerk of Ogemaw, Ogemaw Springs, Mich.:*

DEAR SIR—Your favor of September 22, received, stating in substance that "at the election in your township last spring a supervisor was elected, who was at the time, and is now, without the township, but who pays taxes, and who has left a part of his furniture at his homestead in your township, and who has since his election performed all the duties of the office of supervisor" and asking the following questions: "Can such supervisor perform the duties and spread a legal tax without being an actual resident of the township that he represents?" Second: "Will it in any way invalidate the tax-roll?"

In reply to your first inquiry I would say that the question of residence is one of fact, and is largely determined by the intention of the person whose residence it is sought to determine. The right to select one's home is a valuable right, and the courts have gone a good ways in protecting a person in his rights in that regard.

Under the law exempting a homestead, where the law provides that a homestead must be owned and occupied by the homesteader, the Supreme Court of this State in the case of Earll vs. Earll, 60 Mich., 30, held: "The temporary absence of the owner from his homestead, leaving it in the occupation of a tenant, will not deprive it of its exempt character, if he intends to return and continue it as such homestead; and it is not essential that his wife live with him thereon, continuously." See also to the same effect, Karn vs. Nielson, 59 Mich., 380.

In the case of Harbaugh vs. Cicotte, 33 Mich., 241, the Court held: "The temporary absence of a person or his family, though extending over a series of years, does not necessarily, without regard to his intentions, make him lose his residence, or deprive him of his right as an elector."

It is my opinion that so long as the supervisor owns a homestead in your township, and honestly intends, when his job is finished, to again occupy the same, he could not be removed from office on the ground that he was not a resident of your township.

To your second question, I would reply: that as your supervisor actually occupies the office and in fact performs the duties, so far as his acts are concerned and their binding force upon the public at large, it is immaterial whether he was legally elected or not.

If he was not legally elected to the office, he now in fact occupies the office and performs the duties, and he would be what is known in law as a *de facto* officer, that is, an officer in fact, and it is a general rule of law

that the acts of a *de facto* officer can not be attacked collaterally; and your supervisor in this instance, being at least such an officer, his acts as supervisor are valid in the eye of the law.

The taxpayers could not attack the roll spread by him on the ground that he was not legally qualified to hold the office.

The right to hold office can only be tested by a proceeding commenced against the officer himself, hence, under the circumstances of the case, as you state it, your township is fully protected by the acts of your supervisor.

Respectfully,
A. A. ELLIS,
Attorney General.

County commissioner of schools—Failure to qualify—Successor in office—Vacancies.

Upon the failure of a County Commissioner of Schools, duly elected at the June session of the Board of Supervisors, to qualify and enter upon the duties of his office, the office will become vacant, and such vacancy should be filled as provided in section 12 of Act 147, Laws of 1891.

The Secretary of School Examiners under the old law, would not, by reason of the Commissioner under the new law failing to qualify, hold over, as that office terminated by lapse of time, and also was abolished by the above act 147. The County School Commissioner is not a "successor" to the Secretary of the Board of School Examiners under the old law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Oct. 1, 1891.

C. S. PIERCE, ESQ., *Oscoda, Mich.:*

DEAR SIR—Your favor stating that "you were Secretary of the Board of School Examiners under the old law, and that the person who was elected Commissioner by the Board of Supervisors in June did not qualify, and asking whether you would hold over" is received and considered.

Section 12 of Act No. 147 of the Laws of 1891 provides: "Whenever by death, resignation, removal from office, or otherwise, a vacancy shall occur in the office of county commissioner of schools, the township clerk shall issue a call to the chairman of the township board of school inspectors of each township in the county, to meet at the office of the County Clerk on a date to be named in the said notice, not more than ten days from the date of the notice, and appoint a suitable person to fill the vacancy for the unexpired portion of the term of office."

The only question for consideration is: Whether by reason of the person who was elected neither qualifying nor entering upon the duties of his office, there exists a vacancy such as is contemplated by the statute.

Section 649 of Howell's Statutes provides that: "Every office shall become vacant upon the happening of either of the following events before the expiration of the term of such office * * * * His removal, or neglect to take his oath of office, or to give or renew any official bond, or to deposit such oath or bond in the manner and within the time prescribed by law."

In the case of Lawrence vs. Hanley, 84 Mich., 399, referred to in your

letter, the person who was elected to the office of Auditor of Wayne county died before he qualified. Our Supreme Court held that in such case no vacancy existed which could be filled by appointment by the Governor.

That case I do not understand to be applicable to the facts under consideration. Under the statute governing that case, Howell's Statutes, section 511, the auditor was elected to hold his office until his successor was elected and qualified. The County Commissioner is not a successor to the Secretary of the Board of School Examiners, whose office has expired by lapse of time; and also by act No. 147, above referred to, the office of secretary of the board of school examiners was abolished, and the person holding such office would not, in my opinion, be entitled to hold the office of county commissioner, by reason of the failure of the person elected to such office to qualify.

The County Clerk of your county should issue the notice, as required by section 12 of Act No. 147 of the Laws of 1891, and a County Commissioner should be elected to fill the vacancy.

Respectfully,
A. A. ELLIS,
Attorney General.

Equalization—When should be made.

The Board of Supervisors at their annual meeting in October has authority to equalize the assessment rolls when they have already made an equalization in June of the same year, such last named meeting being held for the purpose of getting another equalization to lay before the State Board of Equalization.

If the Board of Supervisors equalized the rolls in June, under the authority conferred by the statute, a failure to go through the formalty of another equalization in October is not fatal to a tax deed.

If the Board of Supervisors are satisfied with the equalization as made in June, they can permit it to stand, if properly entered of record, or they can pass a resolution adopting such equalization.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, October 7, 1891.

WILLIAM KOUGH, ESQ., *Supervisor of Fayette Township, Jonesville, Mich.:*

DEAR SIR—Your favor of Oct. 7th asking in substance "whether the Board of Supervisors has authority to equalize the assessment rolls in October, having already made an equalization in June of the present year," is received and considered.

The meeting of the Board of Supervisors in June was held by virtue of section 324 of Howell's Statutes, for the purpose of getting an equalization to lay before the State Board of Equalization.

If, at that time, the board caused to be entered upon their records the aggregate valuation of the taxable, real and personal property of each township in the county, as determined by them, they may, if in their judgment the equalization made is correct, at their meeting in October affirm their action taken in June, and allow such equalization to stand as the judgment of the board in October.

It has been held by our Supreme Court that where the Board of Supervisors equalized the rolls in June, under authority conferred by the statute, a failure to go through the formality of another equalization in October was not fatal to a tax deed.

Sillsby vs. Stockle, 44 Mich., 565.

Boyce vs. Sebring, 66 Mich., 218.

These authorities simply hold that the failure to act on the part of the Board of Supervisors would not invalidate the tax, but it is not implied that they would not have a legal right to act in the manner pointed out by the statute.

Section 22 of Act No. 200 of the Public Acts of 1891 (the new tax law) provides that the Board of Supervisors in each county shall, at their session in October, in each year, make the equalization.

This law, as far as equalization is concerned, makes no exceptions whatever for the years in which an equalization is made in June.

If the board are satisfied with the equalization as made in June they could permit it to stand, if properly entered of record, as above suggested, or they could pass a resolution adopting such equalization, which would be a far better way as it would obviate any question in the matter.

Respectfully,

A. A. ELLIS,

Attorney General.

Illuminating oils—Duties of State Inspector—Inspection of illuminating oils.

By Act No. 127 of the Public Acts of 1879, with the several amendments, no person has any right to sell any illuminating oil, for any purpose, until the same has been Inspected; and it is the duty of the State Inspector, or his deputies, to inspect all illuminating oils manufactured from petroleum, without any regard to the use to which they may ultimately be placed by those who purchase them.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, October 10, 1891.

HON. JOHN O'BRIEN, *State Inspector of Oils, Jackson, Mich.:*

DEAR SIR—Your favor of October 7th stating that the Smith Oil Company, of Kalamazoo, claimed the right to sell illuminating oil for heating in oil stoves without inspection, and asking my opinion as to whether or not the statute would bear such a construction, is received and considered.

Section 1 of Act No. 127 of the Public Acts of 1879, when referring to the duty of the inspector, among other things, provides that: "The Governor shall appoint a suitable person * * * who is not interested in manufacturing, dealing in, or vending any illuminating oils manufactured from petroleum, as State Inspector of oils. * * * It shall be the duty of the said State Inspector, or his deputies hereinafter provided, to examine and test the quality of all such oils offered for sale by any manufacturer, vendor, or dealer, and if, upon such testing or examination, the oils shall meet the requirements hereinafter specified, he shall fix his brand or device, viz.: etc."

It will be noticed that the oils to be examined are "illuminating oils

manufactured from petroleum," and under this law it would certainly be the duty of the State Inspector, or his deputies, to examine all such oils.

The object of the law, as will be seen by the test, is for the purpose of protecting the people from injury by reason of the sale and use of oils which will explode below a given test.

Section 3 of the same act, as amended by Act 20 of the Public Acts of 1883, among other things, provides that: "All illuminating oils manufactured or refined in this State, shall be inspected before being removed from the manufactory or refinery, and if any person or persons, whether manufacturer, vendor, or dealer, shall sell, or attempt to sell to any person in this State, any illuminating oil, whether manufactured in this State or not, before having the same inspected as provided in this act, he shall be deemed guilty of a misdemeanor and he shall be subject to a penalty in any sum not exceeding three hundred dollars."

Section 4 of the act provides that "any person who knowingly uses any illuminating oil or product of petroleum for illuminating or heating purposes, before the same has been inspected and approved by the State Inspector of oils, or his deputies, shall be guilty of a misdemeanor, etc."

It seems perfectly clear to me that no person has any right under the laws of this State, to sell any illuminating oil for any purpose until the same has been inspected.

It is not the duty of the State Inspector, or his deputies, to follow oil from place to place to see for what purpose it is going to be used.

The Legislature did not intend that illuminating oil should be sold without inspection, and that the guilt of the seller should depend entirely upon his intention at the time he sold it. Such a construction would entirely do away with all the valuable use of the law. It is, therefore, your duty, under the law, to inspect all illuminating oils manufactured from petroleum, without any regard to the use to which they may ultimately be placed by those who may purchase them, and no person has a legal right to sell any of such oils for any purpose until they have thus been properly inspected and branded by you or one of your deputies.

Respectfully,

A. A. ELLIS,

Attorney General.

Bonds—Time of filing—Directory and mandatory statutes—Duties of building committees.

The general rule is that, where an officer takes an office by election, the election invests him with the title to the office, and the statute requiring him to file his bond within a certain time operates as a defeasance, and not as a condition precedent.

Where an assessor has accepted his office and entered upon his duties, and is ready to file his bond, it is the duty of the district board to accept it, although it is after the time required by law to be filed.

Statutes requiring a bond to be given are usually construed as directory and not mandatory.

The powers and duties of a building committee appointed by a school district depend upon the resolutions passed at the meeting.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Oct. 14, 1891.

F. B. HUNT, ESQ., *Moderator of School District No. 8, Burt, Mich.:*

DEAR SIR—In answer to your letter submitted on Oct. 13, stating in

substance that "at your annual school meeting an assessor was duly elected, and that within the time required by law he filed his acceptance and entered upon the duties of the office, but did not file his bond, that such assessor now desires to file his bond, and asking whether in my opinion such bond could be accepted," I would say:

Section 32 of the General School Laws provides that: "Within ten days after their election or appointment, the several officers of each school district shall file with the director written acceptances of the offices to which they have been respectively elected or appointed."

Subdivision 1 of section 52 makes it the duty of the assessor of each school district to execute to the district and file with the director within ten days after his election or appointment a bond in double the amount of money to come into his hands as such assessor during his term of office.

It will be observed that the acceptance of the office is not embraced in the same section with the giving of the bond, and that the section providing for giving the bond describes him as "assessor of the district."

Statutes requiring a bond to be given are usually construed to be directory only and not mandatory, and the general rule is that where an officer takes an office by election, the election invests him with the title to the office and the statute requiring him to file his bond within a certain time operates as a defeasance and not as a condition precedent, and that where the bond is filed after the expiration of the time, and is accepted by the proper authorities, his title to the office can not be thereafter questioned.

Section 29 of the General School Laws provides that "a school district office shall become vacant upon the occurrence of any of the following events * * * *Seventh*, His neglect to file his acceptance of office, or to give or renew any official bond according to law."

Under the general law relative to township officers it is provided that an office shall become vacant by neglect to give the bond "in the manner and within the time provided by law." In the case of a school district officer, the words "within the time provided by law" are omitted.

It would seem to me the giving of the bond falls within the general rule, and that, inasmuch as the assessor accepted the office and entered upon the duties thereof, and is ready to file his bond, it is the duty of the district board to accept the bond, and when so accepted, that his title to the office cannot thereafter be questioned.

In answer to your question relative to the powers and duties of the building committee appointed by your district, I would say that their duties and authority depend entirely upon the resolutions passed at your meeting. See subdivision 10 of section 27, page 16 of the General School Laws of 1889.

Respectfully,
A. A. ELLIS,
Attorney General.

Intoxicating liquors—Pro rata payment of license—Credits to apply on new license—Object of statute.

Where a saloon keeper paid three hundred dollars and took out a beer license, but subsequently desired to take out a license for the sale of spirituous and intoxicating liquors, the license for such sales being five hundred dollars, *Held*, That on such saloon keeper's presentation of the proper bond and affidavit, and on the payment of the *pro rata* proportion of two hundred dollars in addition for the remainder of the year (but in no case less than one hundred dollars) the County Treasurer would be authorized to issue a receipt, permitting the applicant to sell both spirituous and malt liquors.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Oct. 15, 1891.

H. A. SANFORD, ESQ., *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR—Your favor of Oct. 7th, asking in substance "whether a person who had taken out a beer license last spring and had paid his tax of $300, he now wanting to take out a full $500 license for the sale of whisky, etc., would be entitled to such license on the payment of another $100 to the County Treasurer, and the County Treasurer canceling the former license," is received and considered.

Justice Campbell in the case of Doran vs. Phillips, 47 Mich., 229, says: "The conditions of taxation were not imposed for the primary purpose of increasing the revenues of the municipalities that receive the tax. They are imposed from motives of public policy to restrain the sale of a dangerous commodity, and confine them in the hands of responsible and law-abiding parties, who can make good such claims as are laid upon them. The payment of the money to the municipality is resorted to as an equitable distribution, somewhat proportioned to the mischief likely to arise from the traffic."

The Legislature evidently considered that the mischief likely to arise from the traffic of selling spirituous and intoxicating liquors would be more mischievous and disastrious in its results than the sale of malt or brewed liquors only, and, therefore, the difference in the amount of the tax.

The purpose as stated in the opinion of Mr. Justice Campbell, is not for increasing revenues but for the restraint of a sale of a dangerous commodity.

Section 5 of Act No. 313 of the Public Acts of 1887 provides that: "Every person engaged in any business specified in section 1 of this act, after the first day of May in each year, shall, before commencing such business, make and file the like statement, on oath, as is provided for in section 3 of this act, and pay in advance to said County Treasurer a *pro rata* proportion of the yearly tax on such business, as provided by section 1, for the remainder of the year ending on the 30th day of April next ensuing; and in computing the time of such fractional part of the year for which a tax is required, the same shall commence on the first day of that month in which said business shall commence, but no tax shall be less than one-half of the yearly tax."

It will be seen that this section allows the payment *pro rata* for the proportion of the year, and it would seem to me that, when a division is made and a person is allowed to pay the proportionate part of the

increased tax for a part of the year, (in no case less than for six months) the general purpose of the law has been accomplished.

If a party who had paid a tax of $300 and had sold beer for six months subsequent to the first of May, desired to get out a license for the sale of intoxicating liquors, and should pay into the county treasury an additional $100, that would be in effect a payment of $150 for selling beer six months and $250 for selling both spirituous liquors and beer for six months. He would have a right in the first instance to sell beer for six months longer, or really he has to his credit $150. The Legislature has virtually declared by the act that $150 for six months was relatively that part of the restraint that was necessary for the sale of beer, and that the difference between the tax on beer and spirituous liquors was $200 per year or $100 for six months; this being so, the public would receive the same protection whether the dealer paid the full amount of $250 at the end of the six months or paid $300 at the commencment of the year, and secured the right to sell beer during the entire year, and subsequently paid $100 as additional tax and obtained the further right of selling, in addition to the sale of beer, intoxicating liquors for the last six months.

It would probably be necessary, on account of the form of the bond, for the dealer to give a new bond and have it duly accepted, and in all cases the person or firm who pays the additional tax should be the same identical person or firm who paid the first $300.

It is my opinion that on presentation of the proper bond and affidavit by the person who had already paid the $300, and on the payment of the *pro rata* proportion of $200 in addition, for the remainder of the year (but in no case less than $100) that the County Treasurer would be authorized to issue a receipt, permitting the applicant to carry on the business of selling both spirituous and malt liquors for the remainder of the year.

This has been the practical construction placed upon this statute by the various County Treasurers throughout the State since the passage of Act No. 313 of the Laws of 1887, and I think that fact should be given some weight in construing the law.

Respectfully,
A. A. ELLIS,
Attorney General.

Accounting by State institutions—Manner of book-keeping—Uniform system.

The provisions of Act 146 of the Public Acts of 1891, providing for a uniform regulation of certain State institutions, and a uniform system of book-keeping in such institutions, are not in the least affected or limited by acts 140 and 169 of the same year, providing respectively for placing the criminal institutions, and the various public schools of the State each under one general management.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, October 16, 1891.

HON. GEORGE W. STONE, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your communication of Oct. 14 calling my attention to Acts Nos. 140, 146 and 169 of the Public Acts of 1891, so far as they affect the accounting of the State institutions with your department, and asking

in substance "whether Act No. 140 and Act No. 169, which took effect subsequent to Act No. 146, changed the method of accounting to your department after Oct. 2, so that under the present law only quarterly statements are required instead of monthly statements, as were required subsequent to Oct. 2, under Act No. 146," has been received and considered.

Act No. 140, which is commonly known as the "Consolidation Act" providing for a State Board of Inspectors, which place the criminal institutions of the State under one general management, was approved June 17th, 1891, but was not given immediate effect. Act No. 146 was approved on June 19, 1891, and given immediate effect. Act No. 169 was approved June 26, 1891, but was not given immediate effect.

The object of Act No. 140 was to place under one general management the State Prison at Jackson, the State House of Correction and Reformatory at Ionia, the Michigan Asylum for Insane Criminals, the Branch of the State Prison at Marquette, the Reform School for Boys and the Industrial Home for Girls, and this was accomplished by appointing a "State Board of Inspectors."

The object of Act No. 169 was to put the Public School at Coldwater, the Michigan Asylum for the Blind at Lansing and the Michigan School for the Deaf at Flint under one general management, under a board called the "Central Board of Control."

The object of Act No. 146, passed by the same Legislature, was to amend sections 3, 4 and 5 of Act No. 206 of the Public Acts of 1881, entitled "An act to provide for the uniform regulation of certain State institutions, etc.," and by the amendments the Legislature provided for a uniform system of book-keeping. I can not make it clearer than by quoting at least a portion of section 4: "Every educational, charitable, penal and reformatory institution, shall, in proper books for that purpose, keep a regular account of all moneys received and disbursed, and the receipts from the expenditures for and on account of each department of business, or for the construction of buildings, or the improvement of the premises; and in those institutions where farming and gardening operations are carried on, the accounts shall be so kept as to show, as near as practicable, the cost of carrying on the farm or garden and the quantity and value of the productions of the same, etc."

The section further provides, that, "where manufacturing operations are carried on the cost and result of each separate branch of manufacture shall be kept." Then follows a clause like this: "The account of the receipts and disbursements in all State institutions shall be rendered monthly to the Auditor General, on blanks to be furnished by him, and shall conform, as near as may be practicable, to a uniform system. To accomplish this result the Auditor General by himself, by his deputy, or his general accountant, may visit any institution, at any time, examine the books, papers and accounts of any institution, prescribe such methods of bookkeeping as he shall deem proper for said institutions. and make such a classification of receipts and expenditures as shall be the same for similar institutions, etc., etc."

The next section, section 5, provides for an annual settlement to be made by each of the above named institutions with the Auditor General.

It will be noticed that the act applies to every educational, charitable, *penal* and *reformatory institution, board* or commission disbursing public moneys. This amendment makes the law far more definite than it had previously been and under the system adopted by your department, by vir-

tue of that law, we now have, for the first time, a uniform system of bookkeeping throughout the State institutions.

In section 10 of Act No. 140 I find the following: "The warden or superintendent, under the direction of the board, shall cause the books of the institution to be so kept as to clearly exhibit the working of the prison, asylum, or school, in all its departments."

In section 9 of Act No. 169 I find this clause: "The superintendent of each of the institutions named in this act, under the direction of said board, shall cause the books of the institution to be so kept as to clearly show the actual condition of the institution in all its departments."

Both of the sections last above quoted provided for a quarterly statement to be made by the warden or superintendent to their respective boards.

In my judgment, the above quotations from section 10 of Act No. 140 and section 9 of Act No. 169 are consistent with the provisions of Act No. 146. In each case it simply provides that the superintendent or the warden, as the case may be, shall see that the books are properly kept, and that the manner of their keeping is not at all inconsistent with the provisions of Act No. 146.

It is fair to presume that the Legislature intended simply to make it the duty of the superintendent or warden to see that these duties were performed. It can not be presumed that the Legislature after passing an amendment and providing for a uniform system of accounts throughout the State for the various penal institutions, without any reference whatever to the matter in these general laws which were passed for a different object, intended to repeal the provisions of Act No. 146 relative to the manner of keeping State accounts and accounting monthly to the Auditor General.

The provisions of section 10 of Act No. 140, and section 9 of Act No. 169, providing for a quarterly statement to be made by the superintendent and warden to the boards are perfectly consistent with Act No. 146, as it is further provided that that board shall make a report and shall biennially make certain recommendations, and these reports are for the benefit of the board so that they may properly perform the duties devolving upon them under the act, and also that they may know that the books and accounts are kept as provided by the general law.

I, therefore, give it as my opinion that the provisions of Act No. 146 of the Public Acts of 1891 are not in the least affected or limited by Acts Nos. 140 and 169 of the Public Acts of the same year.

Respectfully submitted,

A. A. ELLIS,
Attorney General.

Power of school district to assess à tax to educate its children outside of the district —Duty of township board of school inspectors—Authority of assessors to pay moneys to outside districts.

Under the various provisions of the school law the authority of a district to vote a tax upon its inhabitants is carefully limited, and there is no law authorizing a district to assess a tax to educate its children outside of the district.

Hiring children taught in a neighboring district is not in compliance with the law requiring a school to be taught in the district, and the district would not in such case be entitled to its share of the public moneys, even though the board made a return that they had had a school taught as provided by law, it being the duty of the school inspector of the township to certify to the facts, and withhold in such case the public school moneys.

The district assessor would have no authority to pay over moneys for the general education of the children to an outside district.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Oct. 16, 1891.

WILLARD B. LYONS, ESQ., *Supervisor of the Township of Big Rapids, Big Rapids, Mich.:*

DEAR SIR—Your favor of Oct. 1, stating that "school district No. 7 in the township of Big Rapids reorganized in the year 1890, and made a contract with the city of Big Rapids (for a stated sum) to send all of their children in the said district to the schools in the said city of Big Rapids, and asking whether it would be lawful to vote a tax and pay the said contract, by having the tax spread upon the tax roll of the township and have it collected the same as though the district owned a school house and held their school therein, there being no school house in the district; and also asking if the district would be entitled to their portion (if they report the number of months school necessary) of township primary money," is received and considered.

The school laws carefully limit the authority of the district to vote a tax upon its inhabitants.

Section 38 of the General School Laws provides, among other things, that "the district board shall apply and pay over all school moneys belonging to the district, in accordance with the provisions of the law regulating the same."

There is no law, so far as I am able to find, authorizing the school district to assess a tax to educate its children outside of the district. If a school district can legally hire its children educated in adjoining districts, it can, with as much authority under the law, spread a tax to send them to the State University.

Section 38 further provides that: "No money received from the primary school interest fund nor from the one mill tax, except as provided by law, shall be appropriated to any other use than the payment of teachers' wages, etc."

Section 27 of the General School Laws confers the duties and limits the powers of the school district, and declares for what money may be voted.

Subdivision 11 of section 27 declares the length of school that shall be taught in the several school districts, and section 56 provides that: "It shall be the duty of school inspectors, before making their annual reports, as required by the preceding section, to examine the list of legally qualified teachers on file in the office of the township clerk, and if in any school district a school shall not have been taught for the time required by law

during the preceding school year by a legally qualified teacher, no part of the public money shall be distributed to such district, although the report from such district shall set forth that a school has been so taught; and it shall be the duty of the board to certify to the facts in relation to any such district in their annual report."

Hence, even though the school district shall return falsely that it had had a school taught in the district as provided by law, yet it would be the duty of the school inspectors of the township to certify to the facts and withhold from the district any part of the school moneys.

Section 172 of the General School Laws provides what shall be public moneys. Section 173 provides that public moneys shall be kept separately from the other fund by the officer in charge thereof. And section 174 reads as follows: "No such officer shall, under any pretext, use or allow to be used, any such moneys for any purpose other than in accordance with the provisions of law, etc."

It seems clear to me that district No. 7 has no authority whatever in law to assess a tax for the purpose mentioned in your letter, and that hiring the children taught in a neighboring district is not in compliance with the law requiring the school to be taught in the district; and further, that the district assessor would have no authority in law to pay over moneys for the general education of the children, to an outside district.

The school board of district No. 7 have ample authority to rent a building and to hire a teacher. However much I may desire in common with other citizens of this State that every child in the school district should have a liberal education, I can not think that the practice suggested in this case would be upheld by law or that such a construction of the school laws would be of general use to the free school system of this State.

Respectfully

A. A. ELLIS,
Attorney General.

Apportionment of State taxes in Dickinson county—Assessment on townships in detached territory.

Under the constitution and laws of this State the Auditor General would have ample power to re-apportion the taxes between these counties after the year 1891.

Where lands were detached from organized townships and attached to Felch and Breen townships of the county of Dickinson, it would be proper and legal for the supervisors of Dickinson county to pass a resolution, enter it at large upon its records, reciting the facts and authorizing the supervisors of Breen and Felch townships to correct the rolls by obtaining and annexing thereto certified copies of the assessments upon the several surveyed townships, together with a certified copy of the certificate of the board of review, and when such rolls are so corrected that they may be made the basis for the apportionment for the taxes of the county of Dickinson.

The county and State have a vested right in the assessment rolls as made, and such rolls or certified copies thereof are made evidence in court.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, October 17, 1891.

A. C. COOK, ESQ., *Prosecuting Attorney of Dickinson county, Iron Mountain, Mich.:*

DEAR SIR—Your favor by telegram, asking "Is the State tax apportioned to Menominee county to be levied upon the property included

within that county prior to the organization of Dickinson county or on the property now in it? If the former, who apportions it? And can the lands mentioned in section 11 of Act 89 of the Laws of 1891, which were detached from townships in Menominee and Marquette and attached to townships in Dickinson county, be taxed at all in 1891? If so, how, and for the taxes of which county or townships?" and asking me to answer by telegram and write you fully, is just received.

The apportionment of the several State taxes by virtue of the equalization made by the State Board of Equalization, and the State taxes assessed by virtue of such equalization made by the Auditor General by virtue of section 22 of Act No. 195 of the Public Acts of 1889, is to be made some time after the first day of September and prior to the meeting of the Board of Supervisors.

The Auditor General, the present year, made the apportionment among the several counties on September 30, which was before the act organizing Dickinson county took effect. Hence, the taxes were apportioned to Menominee, Marquette and Iron counties, without any reference whatever to the law organizing Dickinson county, the Auditor General believing, and I think rightly, that he had no right to take into consideration any law that was not in force.

Section 23 of Act 200 of the Session Laws of 1891, being the new tax law, which, so far as this matter is concerned, supersedes Act 195 of the Public Acts of 1889, is substantially a repetition of section 22 of the old law, and hence gives the Auditor General no further power than was embraced in that section.

Section 93 of Act No. 195 of the Public Acts of 1889, now superseded by Act No. 200 of the Public Acts of 1891, contains this clause: "In case of the organization of a new county after the time for making the assessment roll and prior to the return of the township treasurer, such new organization shall in no way affect the assessment, collection or return of taxes for that year, on any lands attached to the new county. No division of a township after the time for making the assessment roll and prior to the return of the township treasurer, shall in any way affect the assessment, collection and return of such taxes; but such taxes shall be assessed, collected and returns made as though there had been no such division."

In passing the new tax law the above provision appears to have been omitted, hence there is now no law, so far as I am able to find, authorizing the assessment of taxes by an old county upon the lands of a new county detached from it, after such new county is organized. But this being so, it does not in the least relieve Dickinson county from paying its share of the State tax.

If Menominee, Marquette or Iron counties are compelled to pay this tax for Dickinson county, Dickinson county would have to repay the money advanced by those counties for it, and as provided in section 10 of act 89: "The settlement between the said county of Dickinson and the counties of Menominee, Marquette and Iron shall be made on the basis of the equalized valuation of the respective counties."

It would seem at first that that meant there could be no settlement until a new equalization, but the fact is, in arriving at the equalization now made, every subdivision of land in Dickinson county, as now organized, has been apprized.

Next year, under the holding of the Supreme Court, the Auditor Gen-

eral would have ample power under the constitution and laws, to re-apportion the taxes between these counties. And it may be that the several counties, by the Boards of Supervisors, may possess the power to adjust their State tax, and have them so assessed this year, yet that may be somewhat questionable. But without doubt the Boards of Supervisors have a right to agree on what proportion of the State tax should be paid by Dickinson county, and that proportion is such a proportion of the entire tax as the value of the property in Dickinson county bears to the whole value of the property as equalized, and of course the equalization could be obtained by taking the original rolls and adding to or deducting the per cent used by the Board of Equalization. After they have made this agreement, Menominee, Marquette and Iron counties can assess the entire State tax on their property, which they are authorized to do under the law, and assess a less amount for county purposes. Dickinson county can assess her local tax and also such amount as will be necessary to pay the amount that she owes the other counties. In this way neither county will assess one cent more against any property than they would had the law organizing Dickinson county taken effect before the meeting of the State Board of Equalization or the apportionment made by the Auditor General.

In the case of the Supervisors of Ontonogan vs. Supervisors of Gogebic, 74 Mich., 724, Judge Campbell, in delivering the opinion of the Court, when discussing the question relative to the disposition of taxes where a new county was organized, says: "The constitution expressly requires the equalization of assessments every five years, and the law requires State taxes to be levied for five years on the basis of the last equalization. Howell's Statutes, section 322. But this does not mean that when two counties are made out of one the old county must bear the whole burden. It was not meant that any county should be relieved from its share, nor that any county should be overburdened. In order to make the State equalization, the Board of Equalization is to be furnished by each county, through the medium of the Auditor General, with the last assessment of the property in every township as assessed and equalized, so that it has not only the aggregate assessment of each county, but the aggregate of each township. Section 326. Upon each assessment roll the valuations under one law include by separate descriptions the various parcels of land in every township, as fixed and equalized by the proper local authority. The State board makes no change in particular assessments, but if not satisfied with the local county valuation, a percentage is added to or deducted from the aggregate of that assessed in the county. Section 322. The effect of this is to make every item assessed, raised or diminished in the same ratio all over the county, and the proportions are got by a simple process of calculation. * * * * The proportion which the assessment rolls of 1886 in the townships now belonging to Gogebic bear to the aggregate assessments of all the towns in Ontonogan furnishes at once the rates of apportionment, and that proportion remains the standard till the next State equalization. * * * * * If the reports sent to the State board are for any reason lacking in fullness (which is not likely) the original rolls are always accessible, and the Auditor General can easily get the information."

The Court intimates in the last paragraph of this decision that when the Auditor General has once performed his duty and apportioned the tax, his authority in the matter ceases, and it would seem to me that this

is a matter wholly between the counties, and that there is no reason whatever to have any misunderstanding or trouble about it.

The Boards of Supervisors of these several counties can meet, ascertain what amount of tax Dickinson county should pay and then it can be assessed, as above suggested, and in this way the people of all the counties will pay neither more nor less tax any year than they would have paid had the act of organizing Dickinson county taken immediate effect.

Were I to answer your question specifically, it is my opinion that the State taxes as now assessed or apportioned, should be by Menominee county all assessed against the territory of that county, and that Menominee county would have a claim against Dickinson county for the amount of taxes which should be paid by Dickinson county. I am also of the opinion that it is the duty of the supervisors of Dickinson county to assess against the property of Dickinson county for the purpose of paying the amount they owe, or will owe Menominee county, such a share of the State tax as the value of that portion of Dickinson county which was taken from Menominee county bears to the whole value of Menominee county before the division.

This tax, it is my opinion, should be assessed upon the roll for county purposes, or under some head to indicate that it is to pay the debt which Dickinson county owes Menominee county.

There can be no misunderstanding about this matter. The amount Dickinson county should pay is definitely fixed, subject, however, to the time it will take to make the calculation. I think the same rule applied by the Supreme Court in the case of the Supervisors of Ontonogan vs. Supervisors of Gogebic relative to collecting this money back, would apply. And if Menominee county is compelled to pay this money for Dickinson county, it would have an action against Dickinson county for the amount so paid.

What I have said so far as to your settlement and adjustment with Menominee county will apply with equal force to Marquette and Iron counties.

Your further questions: "Can the lands mentioned in section 11, which were detached for townships in Menominee and Marquette and attached to townships in Dickinson county, be assessed in 1891? And if so, how, and for the taxes of which county or townships?" is not quite so easy of solution.

The difficulty that you suggest of course is the fact that the supervisors of Felch and Breen townships have no statement upon their rolls of the value of the lands of those townships detached from the other organized townships and attached to Felch and Breen, and still Felch and Breen townships are duly organized, and there is certainly no authority under the laws of this State, as they now exist, for a non-resident supervisor to assess these taxes, neither could any tax be assessed until properly apportioned by the Board of Supervisors, and it can hardly be presumed that an apportionment could legally be made by a non-resident Board of Supervisors.

I have been able to find no precedent to guide me in giving an opinion in this matter, and it is a case, in my judgment, where the circumstances must govern and control, keeping in view the fact that every part of the township should contribute its just proportion of the public expenses, and every man should have a right to a hearing before the Board of Review concerning the valuation of his property.

Last spring in the organized townships of which the surveyed townships

referred to were a part, all the lands in such organized townships were assessed, including the lands mentioned in section 11; and there is on file with the supervisors of the organized townships in Marquette and Menominee counties the rolls of their townships, giving the valuation of each of these pieces, together with the certificates of the Board of Review that the persons interested therein have had an opportunity to be heard. Every substantial right of the owners of these lands has been protected, and it seems to me that the county and the State have a vested right in these rolls, as made. The rolls, or certified copies thereof, are made evidence in court.

Section 25 of Act No. 200 of the Public Acts of 1891 makes it the duty of the Board of Supervisors at its session to examine all of the records presented to it, on which taxes are to be assessed, and it provides: "If it shall appear to the board that any certificate, statement, paper or record is not properly certified, or that the same is in anywise defective," etc., etc., they may order it corrected.

This clause was presumably put into the law with direct reference to certain certificates that might be furnished by the county clerk, the township clerk, or the Auditor General, but it is broader even than that, and includes records, and I think may reasonably include any roll that is not properly made.

Now it appears by the tax-rolls of Felch and Breen townships that quite a large per cent of the land is left off the record entirely, and this is accounted for by the fact that the assessment has been legally taken, is properly on file, but is now in the hands of another assessing officer, and that a certified copy of that report is evidence.

It would seem to me, under the circumstances, that it was perfectly proper and legal for the supervisors of Dickinson county to pass a resolution, enter it at large upon its records, reciting the facts, and authorizing the supervisors of Felch and Breen townships to correct their rolls by obtaining and annexing thereto certified copies of the assessment upon the several surveyed townships, together with a certified copy of the certificate of the Board of Review, and that when such rolls are so corrected that they be made the basis of the apportionment of the taxes of the county of Dickinson, as provided in section 22 of Act 200 of the Public Acts of 1891.

I am unable to see how any right of any individual taxpayer can be in the least infringed upon or prejudiced by such a course on the part of the Board of Supervisors.

The Supreme Court said in delivering the opinion of Davenport vs. the Auditor General: "There is no reason why the State should lose its whole revenue of the year 1885 from technicality for the benefit of nobody except those who desire to escape the payment of any tax whatsoever." And in this case I can not see how upon a mere technicality, the owners of lands in the several townships which were detached from Menominee and Marquette and attached to townships in Dickinson county, upon a mere technicality should escape taxation, or why upon the same technicality other residents of Dickinson county should be burdened with taxes, which in common equity should be assessed upon such lands.

I, therefore, pointed out the above course, feeling certain that I am sustained in my views by principle, and that no person under such a course

could successfully attack the assessment, or bring himself within the provisions of section 87 of Act No. 200 of the Public Acts of 1891, and that a tax so assessed would be sustained by the courts.

Respectfully,
A. A. ELLIS,
Attorney General.

Division of townships—Vacancy in township offices—Special elections—Taxes.

Where a portion of a township is added to another by the Board of Supervisors, township officers residing on the detached territory thereby lose their residence in the old township, and the offices they filled become vacant, and the township board must supply the vacancy by appointment, and in case the township board is reduced below a quorum, a special election should be called in the same manner as in case of newly organized townships.

After the vacancies are provided for, the tax roll should be perfected by adding or deducting the descriptions of lands, according to the assessment taken in May preceding.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Oct. 30, 1891.

B. T HALSTEAD, ESQ., *Prosecuting Attorney, Harbor Springs, Mich.:*

DEAR SIR—Your favor of October 26 at hand.

I cannot better state the question than to use your own language:

"At the late session of the Board of Supervisors, a part of Maple River township was attached to Littlefield township, both in this county, after petition, etc.

"The township officers of Maple River (supervisor, clerk, treasurer, justice of the peace, etc.), nearly all reside in the territory set off into Littlefield.

"When and on what notice are these offices filled, if vacancy exists?

"Who shall spread the taxes, and who collect for this year?

"Do these officers hold until next April notwithstanding the change?"

The action of the Board of Supervisors by which a part of the officers of the township to which you refer were set over into another township, would deprive such officers of any authority to hold office after such division.

Section 728 of Howell's Statutes provides: "Every township office, including the office of justice of the peace, shall become vacant upon the happening of either of the events specified in chapter fifteen, as creating a vacancy."

The section referred to by the above is section 649 of Howell's Statutes, and subdivision 4 of that section provides that where the officer is a local one the office shall become vacant on his ceasing to be an inhabitant of the township within which the duties of his office are required to be discharged.

The changing the residence of the officer by the act of the Board of Supervisors would have the same effect as though he voluntarily changed his residence.

Youngblood vs. Stellwagen, 33 Mich., 1.

These officers having lost their residence, the township must supply the vacancy in one of the ways pointed out by section 695, Howell's Statutes. That section provides: "Special township meetings may be held for the purpose of choosing officers to fill any vacancy that may occur, if the township board shall deem it expedient, and make their order therefor; and in case the said township board become disorganized, or reduced below the number of a quorum, as provided by law, by, or through the death or removal of the officers composing the same, or from any other cause, then such special township meeting may be called and proceeded in, in all respects, as in the case of newly organized townships."

It will be impossible for me to point out whether it would be necessary for you to have a special election without knowing the fact as to whether or not the township board is disorganized or reduced below the number of a quorum, as provided by law. You understand that a quorum, as provided by law, would be a majority of the township board.

After the vacancies are provided for the tax roll should be perfected by adding or deducting the decriptions of lands according to the assessment taken in May, 1891. If they are to be added, a certified copy of the assessment and of the certificate of the Board of Review should be attached to the new roll.

Your letter does not make it plain as to which township you are inquiring concerning the assessment of taxes, and hence I made the above suggestion, which would apply to either township, as the case might be.

Respectfully,
A. A. ELLIS,
Attorney General.

One mill tax—Assessment on new apportionment.

Where the joint meeting of the Board of Supervisors has agreed upon the apportionment to be placed upon a fractional school district, the one mill tax should be assessed on this new apportionment the same as the other taxes.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 6, 1891.

DAVID L. EAEGLE, ESQ., *Supervisor of Greenbush Township, Eureka, Mich.:*

DEAR SIR—Your question relating to the spreading of the one mill tax on fractional school districts in cases where there exists a manifest difference in the valuation of the property assessed, and asking whether "the mill tax should be assessed on the new valuation as agreed to at a joint meeting of the supervisors, or on the original assessment," is received and considered.

It is my opinion that the mill tax should be assessed the same as the other taxes on the new apportionment, if any is made, by the supervisors.

Respectfully,
A. A. ELLIS,
Attorney General.

Voting at school meetings—Right of women to hold school offices.

A person to be entitled to vote at school meetings on questions relating to raising money, must have property in the district liable to assessment, etc.
A married woman, having no property liable to be assessed for school purposes, would not be entitled to vote upon a question of raising money to pay for a chart.
A married woman who has no property liable to be assessed for school taxes, is not eligible to office in the district, but if she should be elected and enter upon the duties of her office, and was recognized by the other members of the board, she would be an officer *de facto* until properly removed, and so long as she exercised the duties of the office her acts would be as binding on everybody as though she were a taxpayer. Her right to hold office could not be collaterally tried.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 9, 1891.

O. H. AUSTIN, ESQ., *Montague, Mich.:*

DEAR SIR—Your favor asking "Can a married woman who owns no property in her own right and pays no taxes, have a vote for raising money to pay for a chart or other fixtures for school house? And would such person, if elected to office, be a legal officer of such district?" is received and considered.

A person in order to be entitled to vote on questions at school meetings relative to raising money for any purpose, must be twenty-one years of age, have property in the district liable to assessment for school taxes and have resided in the district, or on territory belonging to the district, three months next preceding the holding of such meeting. This being so, a married woman having no property liable to be assessed for school purposes would not be entitled to vote on a question relative to raising money to pay for a chart, or to raise money for any other purpose.

A married woman who has no property liable to be assessed for school taxes is not eligible to office in the district. Section 31 of the General School Laws declares the qualifications of school officers as follows: "Any qualified voter in a school district *who has property liable to assessment for school taxes* shall be eligible to election or appointment to office in such school district, unless such person be an alien."

Your question assumes that the person who is ineligible has been elected. You ask, "Would such person, if elected to office, be held to be a legal officer of said district?" If such a person should be elected and qualify and enter upon the duties of the office, and be recognized by the other members of the board she would be an officer *de facto* until properly removed. Her acts, so long as she exercised the duties of the office, would be just as binding on everybody as though she was a taxpayer and legally entitled to hold the office.

Her right to hold office could not be collaterally tried nor the legality of her acts questioned. The only way to remove such an officer from office would be by proceeding against her by *quo warranto*.

Yours very truly,
A. A. ELLIS,
Attorney General.

Dedication—Public streets—Acceptance of grant.

Where a plat dedicated to the public several streets, and the person executing such plat, about ten years later, deeded the whole addition to another man, the last man named, five years later, deeded to a third person, and both deeds refer to the recorded plat for description, such streets never having been formally accepted by the village, it would be a mixed question of law and fact as to whether the offer was a continuing one.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 9, 1891.

H. O. BLISS, ESQ., *City Attorney, Three Rivers, Mich.:*

DEAR SIR—Your favor received, stating that "In about the year 1868 a certain plat of an addition to the village was properly executed and recorded; that this plat dedicated to the public several streets; that the man who made the plat, about ten years later deeded the whole addition to another man, and about five years later the last man deeded the whole addition to a third person, and that both of the deeds describe the property as lots and blocks and referred to the recorded plat for a description; that the streets have never been formally accepted by the village or used by the public, although some of them have been opened for a time, and asking has the village any rights in those streets? and could the fact of deeding the entire property according to the recorded plat now on file, be construed as a continuing offer to the public?"

The questions presented, as you doubtless understand, are not questions which fall within the duties of this office to answer, and hence are questions on which my opinion would have no more force than any other lawyer's.

I have, however, investigated somewhat, all that time would permit, and I find the question not free from doubt.

The rule in this State is that there should be some act of the public accepting the grant within the period of the statute of limitations.

County of Wayne vs. Miller, 31 Mich., 447.
Field vs. Village of Manchester, 32 Mich., 279.
Cass County Supervisors vs. Banks, 44 Mich., 467.
Buskirk vs. Strickland, 47 Mich., 389.

The question presented by the fact of deeding subsequent to the platting "according to the recorded plat" seems to me raises the question of intent, which is a question of fact. A jury might find, under proper instructions, that the offer was a continuing one as suggested in

County of Wayne vs. Miller, 31 Mich., 447.

As an abstract question of law, I do not think it can be said that the village could get title to the lands by accepting them now. It is a mixed question of fact and law, and a jury might find that the grantors intended to grant and the grantees intended to accept the land, subject to the offer; and if they did so find, the dedication would be all right, and the village would be entitled to the streets.

Very respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Deed of lands—When County Treasurer to give.

Under section 80 of the tax law of 1891, the County Treasurer cannot execute a deed of lands bid off to the State, until the time of redemption has expired.
Under this act there is no provision made for selling State bids, and the State will have to hold lands bid off to the State until after the expiration of the time for redemption.
The Auditor General, and not the County Treasurer, should give the deeds on certificates outstanding at the time Act No. 200 of the Laws of 1891 went into effect.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 10, 1891.

FLOYD L. POST, ESQ., *Prosecuting Attorney Midland County, Midland, Mich.:*

DEAR SIR—Your favor of Nov. 7th asking my opinion as to the construction that should be placed upon certain sections of the tax law of 1891, is received and considered.

To your first question: "Under section 80 can the County Treasurer sell any lands bid off to the State upon which the time of redemption has not yet expired?" I reply I think not. Section 80 clearly refers to lands the redemption of which has fully expired. This is made clear by the next section, which provides: "Upon the payment to the County Treasurer as aforesaid, he shall execute to the purchaser a deed, etc."

Section 80 it will be seen provides for the payment of the amount for which it was bid off to the State, with interest at the rate of one per cent, and section 81 contemplates that a deed will be given at once, hence it could not not apply to lands where the redemption had not yet expired.

Section 84 contains a provision that might throw some doubt upon this construction. The provision reads: "Neither the sale of State tax lands nor the sale of any of the bids of the State for which the time of redemption has not expired shall, in any wise prejudice the rights of the county to enforce the collection of any tax subsequent to the year or years for which the same has been sold, etc."

It might be said that that section implied that the County Treasurer could sell State bids, but the words "State tax lands" and "State bids" have become fixed words, so it is understood what we mean when we use either of these expressions; and inasmuch as section 80 makes no provision for State bids, I am of the opinion that section 84 was passed for the purpose of providing against any trouble that might otherwise be occasioned to the State in the assessment of lands where the State bid had been sold under the law of 1889, and that it is only in cases where the right of redemption has expired, that the County Treasurer has a right to sell lands bid off to the State.

To your second question: "Who under the law can issue certificates for bids on those lands which have been bid off to the State and upon which the time of redemption has not yet expired, the County Treasurer or the Auditor General? Or must the bids by the State be held until the time for redemption shall expire?"

Answer: Under act No. 200 of the Public Acts of 1891 there is no provision made for selling lands until after the right of redemption has expired, hence the State will have to hold such lands until after the expiration of the time of redemption.

To your third question: "Will the Auditor General or the County Treas-

urer give deeds on the certificates now outstanding?" I reply: Under section 111 of the new tax law it is provided that the repeal of the other tax laws "shall in no manner affect any rights which may have accrued, or may hereafter accrue, under such acts or parts of acts."

Under the law of 1889 and previous laws it was the right of purchasers to present their certificates to the Auditor General and obtain a deed, and that right is reserved in the repealing clause above quoted, hence, all those who have certificates under the old law will apply to the Auditor General for a deed.

Respectfully,
A. A. ELLIS,
Attorney General.

Board of Control—Power to make appointments.

Under the act creating the Central Board of Control, which provides that appointments shall be made "by a majority of the members thereof," all appointments must be made with the consent of three out of five of the members of the board.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 13, 1891.

R. J. FROST, ESQ., *Sec. of Central Board of Control, Albion, Mich.:*

DEAR SIR—Your favor relative to the construction that should be placed upon section 4 of Act No. 169 of the Public Acts of 1891, and asking how many of the board, in my opinion, would be necessary to concur in the appointment of officers and agents, under that section, is received and considered.

Section 4 reads as follows: "The officers, agents and employés of each of the institutions so under the management and control of said board shall be appointed by said board, by a majority of the members thereof, and shall hold their respective offices and positions during the pleasure of said board, etc."

Had the section omitted the words "by a majority of the members thereof," it would then be subject to the usual rule that where a power is vested in a board, a majority of the board constitutes a quorum, and a majority of those present at a meeting regularly called are authorized to act, but in this case it is expressly provided that the appointment shall be made "by a majority of the members thereof," and it appears to me that it was the intention of the Legislature, by that clause in the section, to require the consent of the majority of the board to each appointment, therefore if there were only three of the members out of five present, two voting for the appointment and one against it, the appointment would not be made as it would not be concurred in by a "majority of the members of the board."

Any other construction would render those words in the statute absolutely unnecessary and give them no meaning whatever.

Respectfully,
A. A. ELLIS,
Attorney General.

High schools—Tuition for certain branches—Resident scholars not liable to pay.

Where a school is organized under the general school law, and the school board has added Latin as one of the studies in the high school department (said high school having been organized according to law) they would have no right to charge any fee to resident students who take Latin.

Resident students should have an equal right to all the benefits of the school, and should be allowed to study any branch in any grade to which they belong, without paying any tuition.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 17, 1891.

PROF. F. D. SMITH, *Principal Public Schools, Vermontville, Mich.:*

DEAR SIR—Your favor of Nov. 14th, written on behalf of the school board of the Vermontville Public School, stating in substance: "That said school is organized under the general school law; that a high school department has been organized as provided in the second subdivision of section three of chapter ten; that three courses have been prescribed by the school board for the 'High School,' denominated 'English,' 'Latin,' and 'Commercial,' as appears by the printed 'Outline of Course of Study' inclosed; that at a regular meeting of the board in August last, Latin was added as one of the studies, and a fee of ten cents per week was charged therefor and collected from resident and non-resident students alike, that sum being added to the regular non-resident rate in case the student takes this branch," and asking my opinion as to the legal authority of the board to exact this fee from resident pupils, is received and considered.

I see by the "Outline of Course of Study of the Vermontville High School" that what is denominated your "High School" comprises the ninth to the twelfth grades of your school inclusive, and that the studies in the English and Latin courses are substantially alike, with the exception that the English course contains elementary psychology, English history, and United States history, which do not appear in the Latin course, and Latin does not appear in what is called the English course. As I understand your letter the extra fee is not charged by reason of taking what is known as the Latin course but by reason of taking the study of Latin.

It appears plain to me that the school board has no more right under the law to charge extra to resident pupils who study Latin taught in the high school than they have to charge extra compensation for studying psychology or English history. Their authority is all embraced in the same law, and they have no authority whatever outside the statute.

The question then is: Has the school board, in any case, a right to require the payment of a fee by a resident pupil for the right to take any study prescribed by the school board for the high school?

The question involves a construction of section three of chapter ten of the General School Laws. I quote as much as is material to this inquiry:

"It shall be the duty of the board of trustees of any graded school district: 'First, To classify and grade the pupils attending school in such district, and cause them to be taught in such school or department as they may deem it expedient.'"

"Second, To establish in such district a high school when ordered by a vote of the district at an annual meeting, and to determine the qualifica-

tion for admission to such school, and the fees to be paid for tuition in any branch taught therein."

One of the first questions that we should determine is this: Is the high school one of the departments of the graded school of the district? If it is, then the school board has a right, and it is their duty under the first subdivision of section three above quoted, to grade the school and cause such pupils to be taught in the high school as they may deem expedient; in such case the right to determine the qualifications and grade the school gives the school board the right to prescribe the studies for the high school. They can place in the high school any branch they may deem expedient.

In the case of Knabe vs. Board of Education, 67 Mich., 262, the Supreme Court of this State treat a high school as nothing but a department of the graded school.

I am of the opinion that as soon as the district voted to establish a department of the school known as the "High School" then the authority of the district board as given in the first subdivision of the section, would apply to and control that school, and by virtue thereof they should prescribe the studies for the high school. The school board are thus given full authority to grade the school and declare what branches shall be taught in the department denominated the "High School," and if the words in subdivision two, giving the school board authority to determine "the fees to be paid for tuition in any branch taught therein" applies to resident pupils, what is there to hinder the school board from charging a tuition in every branch that is taught in what they denominate the "High School," and thereby paying the entire expense of such school by a tax on the resident pupils who are studying various branches in such department?

In construing this statute we must endeavor to find the intention of the Legislature, as that is the object to be reached in construing all statutes. The clause in subdivision two of section three is broad enough to include resident pupils, but still the question exists: Did the Legislature intend to include them?

"When we once know the reason which alone determines the will of the law-makers, we ought to interpret and apply the words in a manner suitable and consonant to that reason, and as will be best calculated to effectuate the intent."

Cooley's Const., Lim., 79.

And it is well to remember the established rule laid down in Potters Dwarris on Statutes, pp. 179–180, that "a thing that is within the object, spirit and meaning of a statute, is as much within the statute, as if within the letter, and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the maker."

The object of the public school system is to secure to every scholar of the district, rich and poor alike, an equal chance for an education.

In determining the meaning of the language, and the authority given the board, every section of the school law bearing upon this section should be taken into consideration, and in this way we should seek to find, if possible, the intention of the Legislature.

The law makers have provided for dividing the territory into school districts, and in section 45 of the General School Laws it is provided: "All persons residents of any school district and five years of age shall have an equal right to attend any school therein." This same section provides that "the above provision shall not be construed to prevent the grading of

schools according to the intellectual progress of the pupil, to be taught in separate places as may be deemed expedient."

It is clear that this section applies to *all districts* and *all scholars*, and while it allows a grading of the scholars it plainly appears that any person over five years of age who resides in the district can, without any limitation excepting intellectual qualifications, attend any school and any department of the school in the district.

So far as the people of the district are concerned it is a branch of their graded school. It can not be established except by their votes and it must be supported by their taxes. If it was the intention of the Legislature to confer the authority upon the district board to require a tuition from resident pupils, the total expense of the high school might be paid, as above stated, by compelling resident pupils to pay a certain fee for each branch studied in that department. And if so why should it be left to those, who under the school law, could legally vote on such questions?

Certainly there is no reason for doing this if the high school is to be supported by tuition from resident pupils. The very fact that it is left to the vote of the district shows that it was the intention of the Legislature that a department that might teach higher branches of education, and which makes additional expense to the community, should not be organized without the consent of the taxpayers upon whom the burden of supporting the school would legally fall.

Would a holding that a money consideration outside of the taxes must be paid before a resident taxpayer could patronize the high school work out exact justice between the several taxpayers of the district?

A resident taxpayer, who has a son or daughter who has advanced far enough in his or her studies so that he or she is able to enter the high school, should be entitled to the same benefits of the free school system as though they were still studying the lowest elementary branches.

Section 46 provides: "A district board may admit to the district school non-resident pupils, and may determine the rates of tuition of such pupils, and collect the same." That section applies particularly to what is known as the common district board, consisting of a moderator, director and assessor.

It will be observed the only clause there is in the graded school act relative to tuition is that found in said subdivision two of section three of chapter ten, above quoted, and if that power was limited to non-resident pupils, it would give to the board of trustees of a graded school the same authority as is conferred upon the ordinary district board by section 46; if, on the other hand, it was held to apply to resident pupils, one who had not the money to pay the additional tax might be excluded from studying any branch in what is denominated the "High School."

The primary school fund is apportioned among the districts in proportion to the number of children in each between the ages of five and twenty, on the theory that all have an equal interest. A construction of the law, allowing a resident scholar to draw public money for the benefit of the school, so that such scholar should not be permitted to attend school himself, or partake of the benefits of the public money because he could not pay an additional tuition which was required for branches in his grade of study, and which he had reached in due course by constant application and diligence in the school, would be an absurdity.

For the reasons above indicated, it is my opinion that the power given the board to require tuition, expressed in subdivision two of section three

of chapter ten of the General School Laws, was intended, like the power given the district board in section 46, to apply alone to non-resident scholars, the object in both cases alike to make outsiders who desire to participate in the benefits of taxes assessed to support the school, contribute something for the benefits received.

It therefore follows that, in my opinion, under the Michigan public school system every resident scholar of the Vermontville Public Schools has an equal legal right to all the benefits of the school, and should be allowed to study any branch in any grade to which he belongs without paying any tuition.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Failure of the Board of Supervisors to equalize—Should be re-assessed to the county and townships.

Where taxes were declared invalid by reason of the neglect of the Board of Supervisors to equalize the taxes among the several townships and enter of record their determination of equalization, the county tax should be re-assessed to the county, and the township taxes to the several townships, and be re-spread as in the first instance.

Where taxes were charged back under the law of 1889, the county has a right to re-assess them under that law, as such power is among the rights reserved by section 111 of Act No. 200 of the Public Acts of 1891.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 18, 1891.

M. A. NEWTON, ESQ., *Deputy County Treasurer Mackinac County, St. Ignace, Mich.:*

DEAR SIR—In reply to your favor asking my opinion as to whether it was proper to charge the rejected taxes of 1887, which were charged back to your county by the Auditor General, to the county or the townships, I would say:

The taxes, as appears by the decision of the Court relating thereto, were declared invalid by reason of the neglect of the Board of Supervisors to equalize the taxes among the several townships and enter of record their determination of equalization. It is not held or found that there was no authority to assess the taxes in the first instance, but they were rejected solely for the reason above given.

I am of the opinion that you should act under section 81 of Act No. 195 of the Public Acts of 1889, and that the county tax should be re-assessed to the county and the township taxes to the several townships, and be re-spread as in the first instance.

Section 81 substantially provides that where taxes have been rejected for the reasons specified in this case that "the Board of Supervisors shall cause the same to be reassessed upon the same lands and collected with the taxes of the then current year, and in the same manner."

Section 82 provides that if such taxes can not be properly re-assessed

upon the same lands, the Board of Supervisors shall cause the same to be re-assessed upon the taxable property of the proper townships.

You will see from the above that section 82 only allows the assessment against the township where the taxes have been rejected for some reason which forbids their re-assessment against the same lands; that is not this case. In the case at bar they might be re-assessed against the same real estate.

Section 76 of the tax law of 1889, which provides for losses by reason of defaults of certain officers, it seems to me does not apply to a case like the present, as the only loss in this case is a loss of time occasioned by a failure to make a proper record, and under the law the taxes can be re-assessed.

As these taxes were charged back under the law of 1889, the county has a right to re-assess them under that law, such power would be among the rights reserved by section 111 of Act No. 200 of the Laws of 1891.

Respectfully,
A. A. ELLIS,
Attorney General.

Constitutional law—Indeterminate sentence—Discharge of prisoner sentenced under indeterminate sentence law.

Act No. 228 of the Public Acts of 1889, which is commonly known as the "Indeterminate Sentence Law," being declared unconstitutional by the Supreme Court, prisoners held under a sentence which provides for a period of not less than a given time, should be discharged at the expiration of that time.

Where the sentence says not to exceed a certain time, or where it is left to the determination of the Board of Control, under the decision of the Supreme Court, the sentences would be absolutely void, and a prisoner should be treated in all respects as a person who had been duly convicted, and upon whom no judgment had been pronounced by the Court, and should be returned to the county from which he was sent, and the Circuit Court should then pronounce such judgment as is authorized by law.

After the lapse of how much time is the Circuit Court authorized to pronounce judgment upon a conviction where the first sentence pronounced is absolutely void. —*Quære.*

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 18, 1891.

HON. GEORGE N. DAVIS, *Warden of Jackson State Prison, Jackson, Mich.:*

DEAR SIR—Your favor of November 16 relating to the case of the People vs. Cummings, and submitting four questions relating to persons who are imprisoned in the State Prison at Jackson under Act No. 228 of the Public Acts of 1889, recently declared unconstitutional by the Supreme Court of this State, is received and considered.

I repeat your questions as that will be the better way to make myself clearly understood:

"1. When the minimum time expires, is it my duty under that decision, to discharge the prisoner without a special order of the Court?

"2. Where the sentence says, not to exceed five years, sentence being

under the indetermate act, am I authorized to hold them the full five years, and can they be held legally that time?

"3. When no time is mentioned in the commitment, what is my duty in the case, as in case where it says in the commitment, 'The term of said imprisonment shall be determined by the Board of Control of said State Prison at Jackson, as provided in said act?'

"4. If such persons are held unlawfully, would I be justified in their immediate discharge, without any order from any court having such jurisdiction?"

To your first question I reply that I think that, under the decision in the case of People vs. Cummings, where the sentence provides for a period of not less than a given time, you would be authorized in treating that period as the legal time for which you are authorized to detain the person committed, and that on the expiration of that time, under the rules and regulations of the prison, by which I mean giving credit for the good time, if any, it would be your duty to discharge the prisoner.

Your second, third and fourth interrogatories may be all answered together.

The question which has arisen by reason of holding this law unconstitutional necessarily raises a new question, which sooner or later will have to be passed upon by the Supreme Court, viz: After the lapse of how much time is a Circuit Court authorized to pronounce judgment upon a conviction where the first sentence pronounced is absolutely void? The Court have already held that the Circuit Judge was authorized to resentence in some cases.

In those cases named in your third, and probably also in your second interrogatories, the sentences must be considered as absolutely void, and all persons in your prison held by reason of any such sentence should be treated in all respects as a person who had been duly convicted, and upon whom no judgment had been pronounced by the Court, and in my opinion should be returned to the custody of the Sheriff of the proper county. And the several Circuit Courts wherein such persons were convicted should pronounce such judgment as is authorized by law.

If the time which has elapsed since the sentence was pronounced is so long that the Supreme Court could hold as a matter of law, that the Circuit Judge had no authority to proceed to sentence, it would ultimately result in the discharge of such persons. If, on the other hand, the Court should hold that the reason for the delay was a sufficient one, and that the Circuit Judge had not lost jurisdiction to pronounce sentence, the second judgment would be sustained. Each case would, to some extent, have to stand on its own merits.

I therefore recommend that you notify the several Circuit Judges of the several circuits from which the prisoners in State Prison confined under the indeterminate sentence act were sentenced and request that they make such order for the remanding of the prisoners to the custody of the Sheriff of the proper county as to them, under all the circumstances, shall seem proper.

In case the Circuit Judges, or any of them, neglect or refuse to make any order directing the Sheriff to produce such prisoners for sentence, it is my opinion that you should not discharge any such prisoners until the Supreme Court passes on the right of the Circuit Judge to pronounce sentence.

Respectfully,

A. A. ELLIS,

Attorney General.

Discharge of prisoner without habea scorpus proceedings—Authority of Sheriff to arrest without warrant—Jurisdiction of the Court.

Where a person is discharged by reason of a defective information, and he has actually gained his liberty from the first arrest, the Sheriff has a legal right, under the law, to re-arrest him without a warrant, if he has good reason to believe that he is guilty of felony.

After such person was re-arrested, under such circumstances, and placed in jail, the Circuit Judge would have no legal authority to discharge the respondent simply for the reason that he had previously quashed an information charging him with felony.

If the order of the Court discharging the prisoner had not been fully executed by the Sheriff, and the prisoner given his entire liberty, the Court would have full authority to enforce his order.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 18, 1891.

FRANK B. DAVISON, ESQ., *Prosecuting Attorney, Big Rapids, Mich.:*

DEAR SIR—Your favor of Nov. 5, stating substantially that "A respondent was arrested upon an information for false pretenses, the information was quashed and the prisoner discharged. The complaining witness was present and requested the Sheriff to re-arrest the respondant and hold him until he could go to the justice's office and make another complaint for the same offense. The respondent heard this and ran out of the court room, and the Sheriff followed and arrested him about one block from the court house, without having any warrant for his arrest, but knowing the crime above referred to had been committed by the respondent. This occurred about 10 A. M. Respondent was placed in jail, and upon the coming in of the Court at 2 P. M., the respondent's attorney called the attention of the Court to the action of the officer and denounced such action as a contempt of the order of the Court, and demanded the release of the prisoner, whereupon the Court ordered the Sheriff to release him. No *habeas corpus* or other proceeding having been commenced.

Questions. 1st. Was this a legal arrest, and could the respondent have been held by the Sheriff until the warrant was issued?

2nd. Had the Court jurisdiction and power to order said release or to fine the officer for a contempt of his order?" has been received and considered.

Your questions depend entirely upon the facts. If as a matter of fact the respondent was actually released and given his liberty, pursuant to the order of the Court, at the time of the quashing of the information, then the jurisdiction of the Circuit Judge so far as his order in that matter was concerned ceased, as the proceedings on which the order was made, by reason of having been quashed, had absolutely terminated in the court. If on the other hand, the order had not been carried out the Circuit Judge had full authority to enforce his order.

I should presume from your statement of the facts that the Circuit Judge concluded that the order had never been complied with. He ordered the respondent to be released. He started for the door and the sheriff after him in hot pursuit, and the Court might have concluded that the leave of absence that he had given the respondent was more the right to run than the right to stop; and if so, there certainly would have been very little impropriety in enforcing his order.

As soon as the respondent had actually regained his liberty from the first arrest, whenever that time occurred, your Sheriff had a legal right under the law to re-arrest him without a warrant, he having good reason to believe he was guilty of a felony, and after being arrested under such circumstances, and placed in jail, the Court would have no legal authority whatever to discharge the respondent simply for the reason that he had previously quashed an information charging him with a felony.

The Circuit Judge has no authority to say that a person accused of murder, or any other felony, because the information filed is imperfect or insufficient, shall have his liberty unmolested until new papers can be issued. Such a rule would be very dangerous under many circumstances.

Our law is very liberal in securing to every man his liberty against false or unlawful arrests.

I do not mean to be understood that it was necessary for the Court to wait, if he believed that the arrest or detention was unlawful, until some written application was made to him on behalf of the respondent.

Section 8563 of Howell's Statutes expressly provides that when any judge of the Circuit Court shall have evidence from any judicial proceedings had before him, that any person within the county where such Court or officer shall be, is illegally confined and restrained of his liberty, it shall be the duty of such Court or officer to issue a writ of *habeas corpus* or *certiorari* for his relief although no petition be presented or application made for such writ.

This section was intended to apply to a case like the one you present, and it would seem to me that if there were any question in the mind of the Circuit Judge concerning his order as to whether his first order was complied with or not that the proper practice would require that he issue a writ of *habeas corpus* commanding the Sheriff to produce the body of the respondent, and then if it appeared upon the return, under an issue joined that the respondent had not been discharged, the Court could order his release; while on the other hand if it appeared from the return of the Sheriff that he did not hold him by reason of the first arrest but by virtue of his authority as Sheriff, he fully believing that respondent had committed a felony, and that he was temporarily detaining him until a proper warrant could be issued, then an order could be made remanding the respondent to the custody of the Sheriff.

I draw the conclusion from your letter that what happened in this matter occurred in the very presence of the Judge, and knowing the facts, he no doubt concluded that there was no question as to his first order having been violated, and hence determined it entirely unnecessary to raise any question of fact in the premises, as he had already disposed of that matter in his own mind.

What I have already said will dispose of your question relative to the right of the Court to punish for contempt. If the discharge had not been made the Sheriff would have been guilty of contempt, but I apprehend if he had detained him fully believing that a felony had been committed, and for the purpose of waiting for the proper complaint and warrant to be issued and not by reason of the original papers, the punishment really deserved and which might have been administered for contempt of court would have been very light.

Respectfully,
A. A. ELLIS,
Attorney General.

Statutes repealed by implication.

Act 262 of the Laws of 1887, which requires a list of mortgages to be furnished by the Register of Deeds to assessing officers for the purpose of taxation, is repealed by Act No. 200 of the Laws of 1891.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 18, 1891.

J. A. PARKINSON, ESQ., *Prosecuting Attorney, Jackson, Mich.:*

DEAR SIR—Your favor of November 16 asking my opinion as to "whether the Register of Deeds is authorized to furnish a list of mortgages for taxation under and by virtue of Act No. 262 of the Laws of 1887, or whether said law has been repealed," is received and considered.

Act No. 262 of the Laws of 1887 required notice of the filing of mortgages to be forwarded to the county where the holder of the mortgage resided for the purpose of furnishing information to the local officer so that the mortgage could be taxed at the domicile of the holder.

The tax law at the time Act No. 262 of the Laws of 1887 was passed required mortgages to be taxed as personal property, to the holder at his place of residence.

By section 17 of Act No. 200 of the Public Acts of 1891 it is now provided that mortgages, for the purpose of assessment and taxation, shall be deemed and treated as an interest in the real estate, and shall be assessed and taxed to the owner of the property in the county or assessing district where the property is located. And in the same section it is provided: "It shall be the duty of the holder of any such mortgage, deed of trust, contract, or other obligation to file with the supervisor or other assessing officer of the township or assessing district in which the land or real property affected thereby is situated, before the tenth day of April of each year, a written statement under oath of all his estate situated in such township or assessing district, liable to assessment and taxation under the provisions of this act, otherwise a written statement of the mortgagee's interest in any such real estate may be filed with the supervisor by the mortgagor or owner of the fee."

Section 13 of the same act provides that the person who makes a statement for taxation shall make a statement of "all *bona fide* indebtedness owing by such person, giving an itimized statement in detail, how secured, and to whom owing, and the residence of such creditors, etc."

Act No. 262 requiring notice to be sent so that it can be served on the assessing officer, at the residence of the mortgagee, for the purpose of assessment at such residence, is inconsistent with the provisions of the present law and the information would be of no value to the assessing officer under the present law.

Section 111 of Act No. 200 of the Public Acts of 1891 contains this provision: "All acts and parts of acts in anywise contravening any of the provisions of this act are hereby repealed."

I am clearly of the opinion that Act No. 262 of the Laws of 1887 contravenes the provisions of said Act No. 200 of the Public Acts of 1891; that the provisions of the two laws are absolutely inconsistent the one

with the other; and that by reason of the passage of said Act No. 200 of 1891, Act No. 262 of the Laws of 1887 is repealed.

Respectfully,
A. A. ELLIS,
Attorney General.

Local option—Authority of the Board of Supervisors to pass resolutions to repeal the law.

Under Act 207 of the Laws of 1889 (local option law) the Board of Supervisors would have no authority to pass any resolution relative to calling an election to vote on a repeal, until the full period of two years had elapsed after May 1 of the year in which the law took effect.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing Nov. 19, 1891.

C. L. EATON, ESQ., *Paw Paw, Mich.:*

DEAR SIR—Your favor of November 18 stating that "the local option law took effect in your county May 1, 1890, and asking whether or not, if a sufficient number of petitions were secured, an election could be held so that the law, if the majority should so vote, could be repealed on May 1, 1892," is received and considered.

From an examination of Act No. 207, it would seem to me that section 13 of that act does not give the Board of Supervisors any authority to pass any resolution relative to the matter until two years from the May at which the law went into effect.

The language is as follows: "Such resolution or prohibition shall take full effect within such county on the first day of May next following its adoption, *and shall not be subject to repeal by the Board of Supervisors within two years next thereafter. After the expiration of such period* the board may again by a majority vote of all the members elect, act as in the first instance, and repeal such resolution or prohibition."

The language above quoted providing that the board shall not pass any resolution until "after the expiration of such period," would imply that the board must wait two years from the May at which the law took effect.

Respectfully,
A. A. ELLIS,
Attorney General.

Game law—Statutory sentence—Jurisdiction of justices of the peace to impose.

Under section 12 of Act 276 of the Laws of 1889, a justice of the peace is only authorized to pronounce the sentence provided for in the statute.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 19, 1891.

E. C. BARNUM, ESQ., *Petoskey, Mich.:*

DEAR SIR—In reply to your favor asking "whether a justice of the peace can legally impose a fine of less than fifty dollars for a violation of section 12 of Act No. 276 of the Laws of 1889, as amended by act No. 152 the Laws of 1891," I would say:

That in my opinion, a justice of the peace is only authorized to pronounce the sentence provided for in the statute. I see no reason why the rule laid down in Tiffany's Criminal Law, p. 181, should not apply—"A magistrate has no power to mitigate a penalty imposed by a particular statute; he has a discretion in this respect only when it is expressly given him by a statute on which the conviction is founded."

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation of dogs.

Act 141 of the Public Acts of 1891 only repeals the amendatory Act No. 214 of the Public Acts of 1889. The original act for the taxation of dogs is in full force the same as it was prior to the amendment of 1889.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 21, 1891.

WILLIAM A. HAAK, ESQ., *Bellville, Mich.:*

DEAR SIR—In reply to your request for my opinion, would say that Act No 141 of the Public Acts of 1891 only repeals the amendatory Act, No. 214 of the Public Acts of 1889.

Section 2 of Act No. 141 of the Public Acts of 1891, provides that the money in the county treasury, on account of said act, shall be paid to the several townships.

The object of Act 141 was to repeal the amendment of 1889 and to leave the law just as it was before the passage of said amendment.

The original act for the taxation of dogs is in full force, the same as it was before the passage of the amendment of 1889.

Yours very truly,
A. A. ELLIS.
Attorney General.

Statutes—Repeal of—Powers of the State Board of Inspectors.

Section 9696 of Howell's Statutes prescribing certain powers relative to the control of the State Prison at Jackson, is not repealed by section 6 of Act No. 140 of the Public Acts of 1891 organizing the State Board of Inspectors, as the latter act is only a repetition of the former and is a substantial re-enactment. The provisions of the two acts are not inconsistent.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 21, 1891.

To the Honorable, the State Board of Inspectors, Lansing, Michigan:

GENTLEMEN—To your question "Was section 9696 of Howell's Statutes, prescribing certain powers relative to the control of the State Prison at Jackson, repealed by section 6 of Act No. 140 of the Public Acts of 1891?" I have to say:

The only parts of chapter 340 of Howell's Statutes, of which section 9696 forms a part, that would be repealed by Act No. 140 of the Public Acts of 1891 are such parts as contravene said act.

The language used in section 6 of Act No. 140 and in section 9696 of Howell's Statutes, so far as the amount to be paid is concerned, are substantially alike, the latter act being only a repetition of the former. Concerning the other powers given in section 9696, the new act is entirely silent. If section 9696 is consistent with itself it is certainly consistent with section 6 of Act No. 140.

The general rule is that where a law is repealed by virtue of a clause repealing all laws contravening the provisions of such later act that it only repeals such parts of the former act as are actually in conflict with it, and in this case, the new act is not in conflict with any portion of said section 9696. So far as it has any reference to it at all, it is in perfect harmony with it, being a substantial repetition of all that part to which it at all relates.

The rule held by our Supreme Court in the case of Davenport vs. Auditor General, 70 Mich., 192, it seems to me, would be applicable to this case, that: "Where a statute has been substantially re-enacted it has not been repealed at all." Inasmuch as our courts do not favor repeals by implication, I think that in such cases the doubt, if any, should be in favor of the maintaining of the old law.

Another reason that appears to me should have some weight in this case is this: The act providing for a State Board of Inspectors throughout all of its provisions seems to enlarge the powers of that board and give it more power than was had by the board that preceded it; and a holding that they should not have, in this case, the same powers that were delegated to the former board would not be at all in harmony with the scope of the act.

I, therefore, conclude that the Legislature did not intend to repeal section 9696 of Howell's Statutes by the act organizing your board, and that the said section is still in force.

Respectfully,
A. A. ELLIS,
Attorney General.

Incorporation of "Curry Rifles."

The decision of Houchgraef vs. Milward, 38 Mich., 469, upon the organization of corporations under chapter 26 of Howell's Statutes as amended, should be read within the facts upon which it was rendered, and cannot be considered as any impediment in the way of the "Curry Rifles" as a company, organized under the said chapter for the purpose of erecting and constructing an armory. There should be a vote of the company directing the organization of the corporation, and the smallest number, at least, of the company that could form a military company, should sign the articles as incorporators in the first instance.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 23, 1891.

MESSRS. HAYDEN, HUMPHREY & YOUNG, *Ironwood, Mich.:*

GENTLEMEN—Your favor of Nov. 20 stating in substance that the "Curry Rifles" of your city desire to become incorporated for the purpose of erecting and constructing an armory, and asking my opinion as to the effect of the decision of Houchgraef vs. Milward, 38 Mich., 469, upon the organization of corporations under chapter 26 of Howell's Statutes as amended, is received and considered.

Some little doubt is thrown upon corporations organized under that chapter by the last paragraph of the opinion referred to, still I am of the opinion that the decision should be read within the facts upon which it was rendered, and with that in view, I do not see how it can be considered as any impediment in the way of the "Curry Rifles," as a company, organizing under the said chapter for the purposes mentioned.

It is my opinion that there should be a vote of the company directing the organization of the corporation under and by virtue of chapter 26 of Howell's Statutes as amended.

The smallest number, at least, of the company that could form a military company, should sign the articles as incorporators in the first instance. This being done I do not believe any interference on the part of the State would be made or could successfully attack the corporation. The object of the incorporation is a laudable one, and when so organized it should be held to come within both the letter and the spirit of the act.

Respectfully,
A. A. ELLIS,
Attorney General.

Repeal of statutes—Game law—Corporations are included within provisions of the game law.

Section 2 of Act No. 151 of the Laws of 1881 has been suspended by Act No. 276 of the Public Acts of 1889, sections 11, 17 and 20 of said last named act covering substantially the same matter, and portions of sections 17 and 20 being entirely inconsistent with said section 2.

The word "corporation" does not appear in said Act No. 276, but it is immaterial, as subdivision 12 of section 2 of chapter one of Howell's Statutes provides: "The word

'person' may extend and be applied to bodies politic and corporate as well as to individuals." The Legislature intended to include both persons and corporations within the provisions of the act.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Nov. 23, 1891.

H. A. SANFORD, ESQ., *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR—Your favor asking whether, in my judgment, section 2 of Act No. 151 of the Laws of 1881 has been suspended by Act No. 276 of the Public Acts of 1889, as indicated in 3 Vol. Howell's Statutes, p. 3167, is received.

The Legislature intended evidently by passing Act No. 276 of the Public Acts of 1889 to cover the entire subject of the protection of game, as indicated by the title of the act, and while I do not find any one section which alone might be construed as repealing section 2 of Act No. 151 of the Laws of 1881, sections 11, 17 and 20 of Act No. 276 of the Public Acts of 1889 cover substantially the same matter, and portions at least, of sections 17 and 20 are entirely inconsistent with said section 2.

Section 2 of Act No. 151 provides that: "No person, corporation or company shall sell or expose for sale, or have in his possession, except alive, *at any time*, any deer, etc."

Section 17 of Act No. 276 provides that: "No person or persons shall sell or expose for sale, or have in his possession for the purpose of selling or exposing for sale, any of the kinds or species of birds or animals protected by this act *after the expiration of eight days* next succeeding the time limited and prescribed for the killing of any such birds or animals," etc.

Section 20 applying to transportation, makes a limitation of *five days next succeeding the time limited for killing.*

Section 20 could not be construed as being consistent with section 2 which prohibits these acts at all times.

It will be noticed that the word "corporation" does not appear in section 17 of Act No. 276 of the Public Acts of 1889, while it does appear in section 2 to which you refer, section 2 providing that "no person *corporation* or company," etc.

This I do not deem at all material, as subdivision 12 of section 2 of chapter one of Howell's Statutes provides: "The word 'person' may extend and be applied to bodies politic and corporate as well as to individuals."

It is my opinion that the Legislature intended to include both persons and corporations within the provisions of Act No. 276 of the Public Acts of 1889, and that section 2 of Act No 151 is repealed by implication as being inconsistent with the provisions of the said act.

Respectfully,
A. A. ELLIS,
Attorney General.

Tax law—Authority of Auditor General.

Under section 111 of Act No. 200 of the Public Acts of 1891, reserving "all rights which may have accrued or may hereafter accrue" under the acts repealed, the rights of every individual, the counties and the State, are reserved, and when proproceedings were had before the passage of Act No. 200, the Auditor General has the same authority to protect the rights of individuals, counties, and the State of Michigan, that he had before.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 4, 1891.

HON. GEORGE W. STONE, *Auditor General, Lansing, Mich.:*

DEAR SIR—In reply to your question as to the effect of Act No. 200 of the Public Acts of 1891 on your authority to refund to individuals and charge back taxes to the several counties, I would say:

Section 111 of Act No. 200 of the Public Acts of 1891 reserves "all rights which may have accrued or may hereafter accrue" under the acts repealed.

My understanding is that the rights of every individual, the counties and the State are reserved by this saving clause, and that when the proceedings under which the right claimed, was had before the passage of Act No. 200, you have the same authority, so far as protecting the rights of individuals, the counties and the State of Michigan, that you had before.

Respectfully,
A. A. ELLIS,
Attorney General.

State tax lands—Refunding to original purchasers—Duty of County Treasurer.

Under the tax law of 1891 any person purchasing from the County Treasurer State tax lands, obtains simply the right, title and interest of the State. In case the title failed he would not have recourse to anybody, as the law makes no provisions whatever for refunding in such cases, unless the sale is set aside by the Court under section 67.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 5, 1891.

CHARLES D. STEBBINS, ESQ., *County Treasurer, Grand Rapids, Mich.:*

DEAR SIR—Your favor asking "Under the new tax law in case the sale and deed of a piece of land sold by this office from the State list is canceled, who will refund to the original purchaser?" is received and considered.

Any person now purchasing from the County Treasurer any State tax lands obtains simply the right, title and interest of the State, and in case that title fails he is in the same condition as a person would be who purchased lands of any private individual, and received his title by quit-claim deed. In case the title failed he would not have recourse to anybody, as the law makes no provisions whatever for refunding in such cases unless the sale was set aside by the Court under section 67."

Respectfully,
A. A. ELLIS,
Attorney General.

Insane indigent soldiers—Maintenance at asylums by Michigan Soldiers' Home.

Insane members of the Soldiers' Home are entitled to the same rights and protection as other members, and the board of said Home is responsible for the expense of keeping such members at the asylums.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 5, 1891.

To the Honorable, the Board of Managers of the Michigan Soldiers' Home:

GENTLEMEN—Your resolution adopted Nov. 5, 1891, asking for my opinion as to whether the board is responsible for the expense of keeping Michael Hoy at the asylum, or whether the same should be a charge to the county from which he came, together with the following statement of facts to wit: "Michael Hoy, formerly a private in the 105th and 94th New York Volunteers, was admitted to the Michigan Soldiers' Home June 2, 1887. His admission was made upon personal application, he being at the time destitute and suffering from rheumatism and conjunctivitis. He gave Detroit, Wayne county, as his place of residence. Subsequently Hoy became demented to such a degree that he was adjudged insane and sent to the asylum at Kalamazoo on July 10, 1889, that institution being paid by the Soldiers' Home for his keeping. After being there until March 7, 1890, he was returned to the Home, where, after a short stay, he lapsed into his former state, and on March 14, 1890, he was sent back to the asylum. Hoy was sent to the asylum by the Judge of Probate of Kent county under the general law," is received and considered.

In 1889 the Legislature of the State of Michigan passed an act entitled: "An act relating to the admission of insane members of the Michigan Soldiers' Home to the insane asylums of this State, and to their support at such asylums."

That act provides: "SECTION 1. *The People of the State of Michigan, enact,* That in case any member of the Michigan Soldiers' Home shall become insane, and shall be so adjudged according to law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Michigan Soldiers' Home, and the proper officers of said Soldiers' Home shall claim from the general government any proportion of the cost of maintaining such insane inmate to which said Soldiers' Home is entitled by law." This act was ordered to take immediate effect. Approved July 3, 1889.

As appears by your statement of facts, Michael Hoy was first sent to the asylum July 10, 1889; at that time said act relative to the admission of insane soldiers to asylums, above quoted, was in full force and effect; and by reason of being declared insane, said insane inmate did "not thereby lose his connection with the said Michigan Soldiers' Home."

If he did not lose his connection with the Home he was entitled to the same rights, privileges and protection of other members, among which was his support in a case where he was absolutely incapable of supporting himself.

Had it been the intention of the Legislature to throw the burden on the county, from which the insane member came, they would not have provided in this act for his support at such asylums.

The language is not as clear as it might have been, but when read in

connection with the other statutes, the intention of the Legislature is readily understood. We have a general statute which permits the military board to send insane soldiers to the asylums, in which case the State is liable for their support. In case they are sent as county charges, without any order of the military board, they become a State charge after two years.

The Soldiers' Home is supported by the State and the general government. The intention of the Legislature evidently was to so frame the law that the State might receive the help from the general government to sustain this soldier even though he became insane.

If the soldier remained a member of the Home the State would be entitled to so much assistance from the general government, if, on the other hand, by reason of his becoming insane he lost his membership the State would receive no assistance from the general government for his support. That it was the intention of the Legislature of this State to receive the assistance and assume the responsibility appears both from the title of the act and from the fact that it is provided "the proper officers of said Soldiers' Home shall claim from the general government any proportion of the cost of maintaining such insane inmate to which the said Soldiers' Home is entitled by law."

There would be very little reason to believe that the Legislature intended that the Soldiers' Home should draw this money from the general government to assist in the support of the soldier and at the same time be exempt from the support and care of such insane member of the Home.

As Michael Hoy, under the laws of this State, is a member of the Michigan Soldiers' Home it is my opinion that said Hoy is entitled to the same rights and protection as other members, and that under the circumstances your board is responsible for the expenses of keeping the said Hoy at the asylum.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Local option elections—What poll lists to be used at.

The words "general election for State officers" in the local option law refer to the general biennial fall elections, and not to the spring elections at which Judges or Justices of the Supreme Court and Regents of the University are elected; and the poll lists or returns of the canvass to be used are those of the general biennial fall elections.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 9, 1891.

JAMES CLARKE, ESQ., *Prosecuting Attorney of Gratiot County, Ithaca, Mich.:*

DEAR SIR—Your favor of December 8, asking my opinion "whether sections 3 and 4 of Act No. 207 of the Public Acts of 1889 refer to the poll lists used at the general biennial elections held in November only, or also to the April elections, at which Supreme Court Judges and Regents are elected," is received and considered.

Section 3, above referred to, provides among other things that: "It shall be the duty of the county clerks of the counties of this State, severally, upon written application and petition filed with them and addressed to the Board of Supervisors of the county, signed by not less than one-fourth of all the qualified electors thereof, as shown by the *poll lists* or *returns* and *canvass* of the last *preceding general election for State officers*, held in the several townships, * * * * * * * to call a special meeting of such Board of Supervisors in the manner set forth."

Section 4 contains provisions to enable the clerk to ascertain that the petitioners are qualified electors of the county, and that they constitute at least one-fourth of all the electors of such county "as shown by the poll lists or the returns and canvass of the last *preceding general election*."

Prior to the amendment of section 1 of article 20 of the constitution of this State, in the year 1876, the words "general election" always applied to the biennial election. At that time it was provided in said section that where amendments were proposed to the constitution "such amendment, or amendments, shall be submitted to the electors at the next general election."

That section of the constitution was amended in 1876, so that now, under the same article amendments "shall be submitted to the electors at the next spring or autumn election thereafter, as the Legislature shall direct, etc."

It will be observed that the Legislature changed the time of submitting the constitutional amendments, but they did not attempt to change the meaning of the words "general election."

Owing to the fact that the Legislature in 1857 had, by the statutes, declared that "a general election should be held on the first Monday in April and every second year thereafter, for the election of judges," a question arose in the Legislature of 1859 whether the election for Supreme Court Judges was not the "next general election." The opinion of Mr. Howard, as Attorney General, was asked, and he reported his views at length, holding that the November election was the only one at which amendments could be voted on. That view was acquiesced in by the Legislature, and from that time until the amendment of 1876 no question was ever raised concerning the meaning of the words "general election." Since that amendment there has been a popular idea, generally accepted by the people, that the general election held in the spring, at which Justices of the Supreme Court or Regents were elected, was a general election.

In the case of the Attorney General vs. Burch, decided in the January term, 1891, Mr. Justice Morse in delivering the opinion of the Court used this language: "Any spring election at which Justices of the Supreme Court and Regents of the University are elected is necessarily also a general election, and is now so regarded."

It will also be observed that section 2 of article 20, providing for the "general election," has never been changed; and owing to the interpretation that was placed upon this article as it originally existed there can be no doubt of the fact that section 2, article 20, knows but one general election, and that is the biennial election held in the fall.

The question as to what effect the action of the Legislature might have upon the meaning of the words in the constitution was before the Supreme Court in the case of Westinghausen vs. People, 44 Mich., 270. In discussing that matter in delivering the opinion of the Court, Justice Campbell

used this language: "It is hardly necessary to say that subsequent legislation could not change the meaning or effect of any part of the constitution. That instrument can only be changed by the combined action of the Legislature and the people. * * * * * Of course the Legislature can make their own definition for statutory purposes, but this would not change the constitutional definition, or make it apply to any election not within the constitutional contemplation."

Inasmuch as there are by the constitution and the statutes, under the decisions of the Court, two general elections provided for, we must look to the constitution and the language used by the Legislature in providing for these general elections, and compare them with the language used in sections 3 and 4 of Act No. 207 of the Public Acts of 1889, to ascertain, if possible, whether the Legislature intended to refer to both or only one of these elections.

Section 252 of Howell's Statutes provides that: "A *general election* shall be held * * * * on the first Monday in April in the year one thousand eight hundred and sixty-three * * * * * and every second year thereafter, for the election of Regents of the University."

Section 6383 of Howell's Statutes provides: "A *general election* shall be held in the several townships and wards in this State on the first Monday in April in the year one thousand eight hundred and fifty-seven, and on the first Monday in April every second year thereafter, for the election of Judges or Justices of the Supreme Court."

It will be observed by an examination of both the above quoted sections, that while both refer to a "general election" to be held the first Monday in April every second year, that in neither are the Regents or Justices of the Supreme Court referred to as "State officers," but in each the officers to be elected are referred to by the name of the office.

In section 3 of Act No. 207 of the Public Acts of 1889 not only are the words "general election" used, but the general election is further limited by the words "for State officers."

The words "State officers," as popularly understood, refer to the officers named in the constitution as such, who are elected at the biennial fall elections, but we are not confined to the popular understanding alone. Article 8 of the constitution is entitled, "State Officers." The officers therein mentioned are a Secretary of State, Superintendent of Public Instruction, State Treasurer, Commissioner of the Land Office, Auditor General, and Attorney General. And to quote again the language of Justice Campbell: "It is hardly necessary to say that subsequent legislation could not change the meaning or effect of any part of the constitution."

Section 3 of the same article provides: "Whenever a vacancy shall occur in any of the State offices, the Governor shall fill the same by appointment, by and with the advice and consent of the Senate, if in session."

The judges and courts of the State are by the constitution placed under another head, Article 6 of the constitution entitled "Judicial Department."

Section 14 of Article 6 provides: "When a vacancy occurs in the office of judge of the Supreme, Circuit or Probate Court it shall be filled by appointment of the Governor, which shall continue until the successor is elected and qualified."

It will be observed that what is denominated in the constitution as "State offices" are filled by appointment of the Governor, with the con-

currence of the Senate, while the judicial officers are appointed without any concurrence on the part of the Senate.

Clearly the constitution does not include Judges of the Supreme Court under the head of "State officers."

Article 3, section 1, of the constitution divides the powers of the government into legislative, executive and judicial, and while a Justice of the Supreme Court belongs to the State judiciary, he does not, in the language of the constitution, come under what is classified as "State officers." That term in the constitution having been applied to certain officers belonging to the executive department.

The Regents of the University are also mentioned in the constitution, article 13, section 6, and the fact that they are not mentioned among those who are denominated "State officers" has some bearing on the question as to what was meant by the Legislature of this State when they used the language quoted in section 3 of Act No. 207, "at the general election of State officers."

It will also be observed by reference to section 6 of article 13 that "When a vacancy shall occur in the office of regent, it shall be filled by appointment of the Governor." No provision is made as in case of "State officers" for the "advice and consent of the Senate, if in session."

If it was intended by the Legislature that the Regents should come under what was denominated "State officers," vacancies would have been filled in the same manner, and the clause in section 6 providing for filling vacancies would have been omitted, or would have agreed with the clause providing for filling vacancies in "State offices."

While the Regents belong to the executive department of the State they do not come, either as named in the constitution or within the popular acceptation of the term, within the title "State officers."

Hence, I conclude that when the Legislature not only used the words "general election," but further limited those words by adding thereto the words "for State officers" it was their intention to provide only for the use of the poll lists or returns of the canvass which were had at the general biennial fall elections.

Respectfully,
A. A. ELLIS,
Attorney General.

Soldiers' Relief Commission—What number authorized to act.

The Soldier's Relief Commission must act as a board, and has no power to divide a county into three districts, and allow each commissioner to act in his township as the whole board.

The township clerk would not be authorized to accept an order drawn by one member under such circumstances.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, December 11, 1891.

WRIGHT HAVENS, ESQ., *Member of Soldiers' Relief Commission, Grayling, Mich.:*

DEAR SIR—Your favor of December 7, stating that "the Soldiers' Relief Commission of your county had divided the same into three districts, and

that each commissioner acts in his township as a whole board, and asking whether such division was lawful, and the township clerk would be authorized to accept your order on 'emergeney petitions'" is received and considered.

Section 2 of Act No. 193 of the Public Acts of 1889 provides that, "The Soldiers' Relief Commission shall consist of three persons to be appointed by the Judge of Probate."

That section further provides: "Such persons, so appointed, shall organize by the election of one of their number as chairman and one as secretary, and in the event of the death, resignation, change of residence or other disability of any member of said commission, the Probate Judge of the said county shall fill the vacancy by appointment for the unexpired term."

Sections 3 and 4 of the same act declare the duties of such commission.

The duties enjoined are not vested in any particular member, but are given to three persons, who are designated as the "Relief Commission."

It is not the intention of the law that the powers vested in this board shall be exercised by one member alone. When a meeting is regularly called, and all the members have been notified, two being a majority, would constitute a quorum, and be authorized to do business, but any less number, or any two, except at a meeting of the board, would have no authority to act under the statute.

It is therefore my opinion that the action of your board in attempting to allow one member to exercise the functions of the whole board is illegal and void.

Respectfully,
A. A. ELLIS,
Attorney General.

Local option—Elections—Provisions of general election to govern.

The provisions of the general election law of 1891 apply to and should govern local option elections held under Act 207 of the Public Acts of 1889.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 16, 1891.

I. N. COWDRY, ESQ., *County Clerk, Ithaca, Mich.:*

DEAR SIR—Your favor of Dec. 12th stating that "The Board of Supervisors have called an election for the 25th of January to vote upon the question of local option;" and asking: "Will this election have to be held under the law as passed by the last Legislature?" is received.

By reference to section 9 of Act No. 207 of the Laws of 1889 (local option law) you will see that the manner of voting and conducting the election should be the same in every respect as in the case of general elections.

Hence, I answer: Yes.

Respectfully,
A. A. ELLIS,
Attorney General.

Support of poor persons.

Where a person resided in a township for two years, and was self-supporting during that time and never received any aid from the township, and he afterwards moved into another township, resided there eight months and then became sick, and had to be aided, he did not, under the statute, gain a residence in the latter township, not having been there a year, and he would therefore be chargeable back to the township from which he moved, under the first subdivision of section 1789 of Howell's Statutes, provided that he did not move into a township in another county.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Dec. 16, 1891.

M. S. WEED, ESQ., *Supervisor of Excelsior Township, Excelsior, Mich.:*

DEAR SIR—Your favor of Dec. 12, stating "A person resided in my township for two years and was self-supporting during that time. Never received any aid from my township. He moved into another township, resided there eight months and then became sick, and had to be aided. Now is he chargeable back to my township or is he a county charge?" is received and considered.

Section 1787 of Howell's Statutes which is section 33 of an act relative to the support of the poor by the public, provides that: "Every person of full age who shall have been a resident and inhabitant of any township for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such township."

Subdivision 2 of section 1789 of Howell's Statutes, when speaking of the support of a person who has never been a charge upon the public, provides: "If he has never gained a settlement in the county in which he shall become poor, sick, or infirm, he shall be supported by the superintendents of the poor, at the expense of the county." While subdivision one of the same section provides: "If he has gained a settlement in any township or city in such county he shall be maintained by such township or city."

Hence, the answer to your question depends entirely upon the question as to whether the person to whom you refer moved into a township in another county. If he did not move into an adjoining county, but remained in your county, he not having gained a residence in the second township, not having been there a year, he would be chargeable to your township under the first subdivision of section 1789 of Howell's Statutes.

Respectfully,
A. A. ELLIS,
Attorney General.

Statutes—Repeal of—General law adopting provisions of another general law by reference, repealed by subsequent repeal of general law—Local option law—Ticket to be used.

So much of section 8 of Act No. 207 as provides for furnishing the tickets, etc., is repealed by Acts Nos. 190 and 194 and the ticket should be printed in the form provided by the general law, within certain limitations.

It is the duty of the township board of election commissioners of each township to furnish tickets.

Section 9 of said Act No. 207 should now be construed to refer to Act No. 190 of the Public Acts of 1891, as limited by Act No. 194 of the Public Acts of the same year.
The general election referred to in section 9 of Act No. 207 is the general election for State officers, which is the biennial fall election.
Under section 7 of said Act No. 207, it would be proper to make affidavit of the posting of notices.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, December 24, 1891.

S. F. DWIGHT, ESQ., *Hillsdale, Mich.:*

DEAR SIR—Your favor of December 18, asking in substance:

"1. Whether section 8 of Act No. 207 of the Public Acts of 1889 is repealed or modified by Act No. 190 of the Public Acts of 1891, and, if so, to what extent?

"2. To what law does section 9 of Act No. 207 now refer as the law governing general elections, which should be observed and enforced at elections held under Act No. 207 of the Public Acts of 1889?

"3. What general election is referred to in section 9 of Act No. 207?

"4. Under section 7 of Act No. 207 of the Public Acts of 1889, should proof of the posting of said notices be made by affidavit filed in the township clerk's office and the county clerk's office, or either of them, and if so, which?" is received and considered.

Act No. 207 of the Public Acts of 1889 was approved by the Governor June 29, 1889, and took effect ninety days after the adjournment of the Legislature.

At the time of the passage of Act No. 207 there was pending in the Legislature a bill for the adoption of a new general election law. That law was passed by the Legislature in 1889, and approved by the Governor July 5, 1889, and, in fact, was not approved, as will be seen by the date, until after the adjournment of the Legislature.

Section 9 of Act No. 207 refers to no particular election law. It provides that: "The registration of the qualified electors, the hour for opening and closing the polls * * * shall be the same in every respect as in the case of a general election; and the laws of this State pertaining to the registration and qualification of electors, the disposition of the ballots, the canvass of the votes, and declaring the result thereof at general elections, shall be observed and enforced at every election held under this act, as far as the same shall be applicable."

Section 9 was drawn so that whatever the law might be that governed general elections it might be applicable in the case of an election under Act No. 207.

On the same day that Act No. 207 took effect the general election law of 1889 also went into operation; and if an election had taken place during the time that law was in force the board of registration, etc., would have had to have been controlled by that law.

The Legislature of 1891 passed a new election law—Act No. 190. That law provides for a different manner of counting votes and a different way of voting. Under the law of 1891 the voter must indicate his choice by a cross upon the ticket opposite the name or provision for which he desires to vote, all names, and all propositions being on the same ballot.

Section 9 of Act No. 190 provides for a board of election commissioners, whose duty it shall be to print and distribute the ballots and stamps for elections. Act No. 190 provides that all inconsistent acts are repealed.

In addition to Act No. 190 the Legislature of 1891 also passed another

act relative to elections, which is Act No. 194, entitled: "An act to prescribe the manner of conducting municipal and township elections and to prevent fraud and deception thereat."

These two laws cover the entire subject and would repeal the election laws of 1889.

It will be observed by reference to section 9 of Act No. 207 that the election provided for is not a county election, nor in any manner a general election. That section reads as follows: "Upon the day and date so designated in the call of the Board of Supervisors an election shall be held in every township, ward and election district in such county upon the proposition set forth and designated in such call, etc."

Section 1 of Act No. 194, above referred to, provides: "That all elections hereafter held in the various cities, villages and townships in this State shall be in conformity with the provisions of the laws governing general elections, so far as the same shall be applicable thereto, and all provisions of such laws relative to the boards of election inspectors, the arrangement of polling places, the manner of voting and receiving votes, and the canvass and declaration of the result of such election are hereby made applicable to such municipal and township elections, but the time for the opening and closing of the polls shall not be affected thereby."

Section 9 of Act No. 207 especially provides that the time of opening and closing the polls shall be governed by the general law, and hence, as to that, section 1 above referred to would not apply.

Section 2 of Act No. 194 of the Public Acts of 1891 provides for a township board of election commissioners, whose duty it shall be in all township elections to furnish the ballots.

Therefore, in reply to your first question I would say that:

So much of section 8 of Act No. 207 as provides for furnishing the tickets and the kind of ticket to be furnished is repealed by Acts Nos. 190 and 194, and the ticket in case of an election under Act 207 should be printed in the form provided by the general law with the limitation given in Act No. 194, that no vignette is required; and it is the duty of the township board of election commissioners of each township to furnish tickets.

That portion of section 8 relative to giving notices of the election, etc., to remain in full force.

In reply to your second question:

Section 9 of Act No. 207 should now be construed to refer to Act No. 190 of the Public Acts of 1891, as limited by Act No. 194 of the Public Acts of the same year.

To your third question:

It is my opinion that the Legislature had reference to the same general election that they referred to in section 3 of said act, which is the general election for State officers, by which, in my opinion, they intended to refer to the biennial fall election.

To your fourth question:

The law does not provide for any proof in form but it would appear to me that it would be proper, if not absolutely necessary, that there should be an affidavit of the posting of such notices filed in the office of each township and city clerk where the notice is given, that the persons who conduct the elections may know that the proper statutory notice has been given.

Respectfully submitted,

A. A. ELLIS,

Attorney General.

Computation of good time of prisoners.

Section 9704 of Howell's Statutes providing for the deduction of good time, is divided into periods, each period commencing back at the termination of the preceding one, but not including it.

During the first period of the prisoner's confinement he is entitled to two months each year; during the second period he is entitled to seventy-five days each year, etc.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Jan. 20, 1892.

HON. JOSEPH NICHOLSON, *Superintendent of the Detroit House of Correction:*

DEAR SIR—Your favor stating that you are allowing the same good time to persons imprisoned at the Detroit House of Correction for State prison offenses as is given at the Michigan State Prison at Jackson and the State House of Correction at Ionia but that, in your opinion, the time is not correctly computed in which view you are supported by your attorney, Fred A. Baker, and asking me for my opinion as to the proper construction of section 9704 of Howell's Statutes, is received.

I have read carefully what you and Mr. Baker say as to the construction of the section, and I cannot agree with the conclusion you reach.

That portion of section 9704 applicable to this inquiry, reads as follows: "Every inmate who shall have no infraction of the rules of the prison or laws of the State recorded against him shall be entitled to a deduction for each year of his sentence, and *pro rata* for each part of a year when the sentence is for more or less than one year, as follows: From and including the first year up to the third year, a deduction of two months for each year; from and including the third year up to the fifth, a reduction of seventy-five days for each year; from and including the fifth up to the seventh year, a deduction of three months for each year; from and including the seventh year up to the tenth year, a deduction of one hundred and five days for each year; from and including the tenth year up to the fifteenth year, a deduction of four months for each year; from and including the fifteenth year up to the twentieth year, a deduction of five months for each year; from and including the twentieth year up to the period fixed for the expiration of the sentence, six months for each year."

It will be seen that the time for computing "good time" is divided into periods. The first period includes the first and second years, the second period includes the third and fourth years, the third period includes the fifth and sixth years, the fourth period includes the seventh, eighth and ninth years, the fifth period includes the tenth to the fourteenth years inclusive, the sixth period includes the fifteenth to the nineteenth years inclusive, and the seventh or last period includes the twentieth year to the expiration of the sentence. Each period commences at the termination of the preceding one, but does not include it.

The nominal period of imprisonment of a person who was sentenced for five years would cover two full periods and a part of another. During the first period he is entitled to two months each year, during the second period he is entitled to seventy-five days each year, and during the third period he is entitled to three months each year, and as each period is computed by itself he would be entitled to a total of good time for each period, or one year from a five years' sentence.

The trouble with your computation is, you figure as though each period

commenced back at the first year and included all the time from the first year to the last year at the rate designated for the last year of the imprisonment, whereas in fact, the rate named in the last year only runs back to the last of the next preceding period. For example, the statute reads "from and including the fifth up to the seventh, a deduction of three months for each year." You interpret this just as though the statute read "from and including the first up to the seventh year a deduction of three months each year," and hence, claim that a person who is sentenced for five years, being entitled to three months for the fifth year, would in five years, be entitled to five times three months, or fifteen months good time in five years. That would be correct if the statute had each succeeding period commence back and include the first year, but it does not, and a person who is sentenced for five years has only one year in the period which can be computed at "three months each year" and to this time he must add the other good time he is entitled to during the two preceding periods at the rate fixed for such periods.

If the method of computation contended for by you was correct a man who was sentenced for fifteen years would be entitled to his discharge before one who was sentenced for fourteen years. A man who is sentenced for fourteen years is entitled to four months each year for the last period, and if we say that the four months shall apply for each year from the first to the fourteenth year, then he would be entitled to fifty-six months good time, or four years and eight months. Fourteen years less four years and eight months leaves nine years and four months that the party must stay. If he was sentenced for fifteen years he would be entitled to five months the last year, and, under your theory, in fifteen years he would be entitled to fifteen times five, or seventy-five months, or six years and three months; and fifteen years less six years and three months leaves eight years and nine months. Hence under your interpretation of the statute, a person who is sentenced for fourteen years has seven months more of actual imprisonment than one who is sentenced for fifteen years. A man who was sentenced for nineteen years would have to stay eleven years and one month, while a person who was sentenced for twenty years would be discharged in ten years.

It seems clear to me that the manner in which the time is computed under section 9704 at the State Prison at Jackson and at the State House of Correction and Reformatory at Ionia under a similar statute, is correct, and that the computation indicated by you is incorrect.

Respectfully,

A. A. ELLIS,
Attorney General.

Authority of township treasurer to charge an additional collection fee when warrant is extended.

Section 50 of Act 200 of the Laws of 1891 has no application to the duty or authority of the township treasurer to collect the taxes, and such officer has no authority, whatever, where his roll is extended by virtue of section 33 of said act, to require anything in excess of the usual per cent.

The County Treasurer has no authority to require township treasurers to pay over to him any additional fee by reason of the extension of the roll.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Jan. 26, 1892.

H. A. SANFORD, ESQ., *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR—I have received your favor which reads as follows:

"Please inform me if under section 50 of the tax law of 1891, Act No. 200, there is any authority for the several township treasurers to collect after the first or fourth day of February, provided the extension of time is granted for collection of an additional one per cent upon the taxes which is to be paid to the County Treasurer by said township treasurer. Has the County Treasurer any authority to exact the additional one per cent upon taxes collected by the township treasurer after the first of February in his settlement with them. Our County Treasurer is informing the township treasurers to collect the one per cent after February first."

In reply thereto I would say that it is my opinion that the township treasurer has no authority whatever where his roll is extended by virtue of section 33 of Act No. 200 to require anything in excess of the usual per cent.

Section 50 to which you refer has no application whatever to the duty or authority of the township treasurer to collect the taxes, as it only applies to "descriptions of lands returned as aforesaid." It has no application whatever to lands or taxes that were not returned unpaid. And therefore your County Treasurer has no authority under the law to require the several township treasurers to pay over to him any additional fee by reason of an extension of the roll.

Respectfully,
A. A. ELLIS,
Attorney General.

Deficiency in school funds, how filled—Construction of sections 41 and 43 of Act 200 of the Laws of 1891.

Section 41 of act No. 200 of the Public Acts of 1891 does not in any way conflict with the provisions of section 43 of the same act authorizing the township treasurer to retain out of the State and county taxes a sufficient amount to fill any deficiency that may exist in the school fund of the township.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, January 26, 1892.

HON. FERRIS S. FITCH, *Superintendent of Public Instruction, Lansing, Mich.:*

DEAR SIR—Your favor stating: "I desire to have your interpretation of sections 41 and 43 of Act No. 200 of the Public Acts of 1891. Section 41 provides a certain order of payment of funds when the full amount of tax is not collected, 'but in no case shall the amounts collected for any one fund to be paid on the orders drawn on any other fund.' Section 43 pro-

vides that 'within one week after the time specified in his warrant, the township treasurer shall pay to the County Treasurer all State and county taxes collected, except that from the State and county taxes collected he may retain a sum sufficient to fill any deficiency in the sum collected for school purposes. * *' There seems to be a conflict between the two sections. While one requires the amount of school tax to be made good, whether collected in full or not, the other would seem to forbid it. Your opinion is respectfully solicited," is received and considered.

As you state, section 41 provides that if the full amount of the township taxes are not collected, the township treasurer shall pay such taxes in the order enumerated in that section; that is, the amount of school taxes on the order of the school officers; the amount for general township purposes, on the order of the township board, etc., but in no case shall the amounts collected for any one fund be paid on the orders drawn on any other fund.

This section simply provides on what orders the township treasurer is authorized to pay the moneys belonging to the different funds. This in no wise conflicts with the provisions of section 43. That section authorizes the township treasurer, when he pays over the money to the County Treasurer, to retain out of the State and county taxes collected, a sum sufficient to fill any deficiency in the sum collected for school purposes, provided, etc., that the amount retained shall not exceed the amount of delinquent school taxes returned.

Section 43 relates to an entirely different class of moneys. Township taxes are not referred to in that section, but it authorizes the township treasurer to keep out of the State and county taxes enough to make good the school fund of the township.

Section 41 does not forbid, in any sense, the making good any deficiency in the school tax, but only forbids the payment of township moneys out of one fund on an order drawn on another fund.

The deficiency in the school tax is not made up of the taxes referred to in section 41, but is made up of the State and county taxes referred to in section 43. And after the deficiency is made good, the provisions of section 41 would forbid the money thus added to the school fund from being used for any other purpose.

There has been some trouble in several parts of the State in maintaining the schools by reason of failure to collect promptly the school tax, and it was evidently the intention of the Legislature to require the State and county to loan the school districts sufficient money to provide for any deficiency that might arise by reason of the failure to collect the school tax, and the County Treasurer in turn is permitted, by section 43, to retain the amounts thus reserved by him from the first money received by him from any township taxes.

Respectfully,
A. A. ELLIS,
Attorney General.

Collection of taxes—Manner of—How enforced.

Where a person refuses to pay his taxes on a mortgage assessed to him in the spring of 1891, the collection must be made under the law of 1889; and it cannot be returned as a lien upon the *real estate*, as provided in the tax law of 1891.

If the person who owns the mortgage has other personal property, it can be seized and sold for taxes. If he has none, he can be sued, and if he then refuses to pay, a bill can be filed in the same manner as a judgment creditor's bill, and the mortgage can be reached in this way to satisfy the tax.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, January 26, 1892.

W. W. WENDELL, ESQ., *Prosecuting Attorney, Ontonagon, Mich.:*

DEAR SIR—Your favor of January 25, stating that a person who owns a mortgage on a mine refuses to pay his taxes, and asking me whether in the collection of the tax, where the property was assessed in the spring of 1891, you should proceed under the tax law of 1891 or under the old law, is received and considered.

The assessments made in the spring of 1891 were made under the old law of 1889, which listed mortgages as personal property, and hence, in the collection of the tax to which you refer, it must be collected the same as any other personal tax, and it cannot be returned as a lien upon the real estate.

If the person who owns the mortgage has other personal property it can be seized and sold for taxes. If he has no personal property he can be sued and a judgment obtained for the amount of the tax; and if he then refuses to pay it, a bill can be filed in the manner of a judgment creditor's bill, and the mortgage can be reached in this way to satisfy the tax.

Respectfully,
A. A. ELLIS,
Attorney General.

Reform School—Age at which children can be received.

The Superintendent of the Reform School is not authorized by the statutes of this State to receive male persons, convicted of crimes punishable by fine or imprisonment, or both, who are at the time of conviction, under the age of twelve years.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE
Lansing, Jan. 29th, 1892.

HON. W. H. S. WOOD, *Superintendent of the Reform School, Lansing, Mich.:*

DEAR SIR—To your question submitted to this department: "Am I as Superintendent of the Reform School authorized by the statutes of this State to receive male persons convicted of crimes punishable by fines or imprisonment, or both, except for offences punishable for life, who are at the time of conviction, under the age of twelve years and who have been sentenced to the Reform School?" I would respectfully reply:

The age of persons who may be received by you is governed by section 9817 of Howell's Statutes.

Section 9819 relates to the discipline of boys sentenced to the Reform School and provides in general terms "Each and every boy under the age of sixteen years who shall be legally committed to the said school as provided in the foregoing section?" This section might on cursory examination be considered to apply to all boys under sixteen, but it will be seen it is further limited by the clause "legally committed to said school" and also "as provided in the preceding section." The only preceding section in the chapter or original act relating to this matter is section 10 or section 9817 of Howell's Statutes above referred to, and an examination of the history of this section as it affects the age of persons committed will show that the Legislature of the State of Michigan have had many opinions of the youngest age when it would be well to confine a boy in the Reform School. Such history will have some tendency to explain the condition of section 9817 as we now find it. The original act was passed in 1855 and the limit was "Under sixteen and over ten years of age."

The section was amended in 1857 and the limit of lower age was abolished entirely. The section read simply "Under sixteen years of age."

In 1861 the section was amended and the age was stated "Under sixteen and over seven years of age."

In 1867 the section was amended and the age fixed at "Under sixteen and over ten years."

In 1877 the section was amended but no change made in the age of persons who could be received at the school.

In 1885 the section was amended, the age in the first part of the section was left, "Under sixteen and over ten years," but a proviso was added providing that "No boy shall be sent to the Reform School as a disorderly person who is under the age of eleven years."

In 1891 the section was again amended and the age fixed at "Under sixteen and over twelve years of age," and the clause in the proviso as to disorderlies was also fixed at twelve years. The clause relating to disorderly persons might have been omitted entirely as the lower limit of age in the body of the section had been fixed at twelve, and hence it was entirely unnecessary to repeat the age; but the fact that the original clause about disorderlies had been added in 1885 and that this amendment changes it from eleven to twelve years, shows the intent, and it could not be said, under the circumstances, to imply that boys under twelve could be received for other offenses.

From the history of this legislation as well as from the plain letter of the law, I am of the opinion that it was the intention of the Legislature to fix twelve years of age as the lowest limit at which boys could be legally committed to the Reform School, and that you are not authorized to receive any boy committed to the Reform School under the age of twelve years.

Very respectfully,
A. A. ELLIS,
Attorney General.

Taxes become a personal charge after the listing of the lands—Sale of land does not affect this.

A person who sells land after the assessment is made and prior to the first of December is liable to the township for the payment of the taxes for that year, the taxes being a personal charge as between her and the public.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 4, 1892.

H. A. SANFORD, ESQ., *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR.—Your favor stating that Mrs. May, in November, 1891, deeded to the United States a description of land in your county for an Indian Industrial School, and asking whether or not the tax of $60 on the land levied in 1891, should be collected of Mrs. May, and whether it is a lien upon the land, or must the township where the land is situated lose the tax, is received.

In reply I would say that the taxes against the land were assessed on the land in the spring prior to the sale by Mrs. May to the United States, and she is legally bound to pay the taxes.

The question is one between Mrs. May and the township.

The United States government would be exempt from paying taxes, but that fact does not discharge Mrs. May from her liability under the law.

The statute provides that the taxes assessed should become at once a debt to the township from the person to whom they were assessed, and the statute also provides that they shall be assessed to the person to whom they were listed at the time the assessment was taken, and be assessed as of the second Monday of April.

If you will examine the case of Harrington vs. Hilliard (27 Mich. 278, annotated edition, or 279, old edition) you will find that it is there held "As against a resident owner, owning the land in the spring, when the listing and valuation were made, or the person taxed, the taxes subsequently assessed for that year had always been a personal charge, as between him and the public, and might be collected of him by distress and sale of his goods, though he might afterwards have sold it before the tax was imposed."

I am therefore of the opinion that these taxes should be collected of Mrs. May.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Fishing—Construction of statute—Meaning of "set lines or night lines."

Fishing by lines commonly called "bob lines" through the ice is not a violation of the law prohibiting the use of "set lines or night lines."

A penal statute cannot be extended by construction beyond its plain import.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 5, 1892.

JOHN W. BENNETT, ESQ., *Deputy Game Warden for Livingston County, Brighton, Mich.:*

DEAR SIR—In reply to your request for a construction of Act No. 159

of the Public Acts of 1891 entitled: "An act to regulate the taking and catching of fish in the inland lakes of this State," so far as it relates to "set lines or night lines" and what its meaning is in that regard.

I have the honor to reply:

It is my opinion that the law is aimed against fishing by certain devices specially named in the act, and other devices that might be used not consisting of the hook and line.

The terms "set lines or night lines" are used in section 1 as synonymous terms. This is evident from the punctuation and from the fact that "night lines" are not used in section 2.

"Set lines or night lines" consist of long lines used to extend across a river or the point of a bay or lake, to which are attached a number of short lines with hooks attached. They are usually used by setting them at night and in the morning taking up the fish that may have been caught during the night. That the act does not relate to the manner of fishing with an ordinary hook and line not attached to other hooks and lines so as to constitute what is known as a "set line or night line" is evident from the fact that in section 2 it is provided that if "the defendant is found upon the waters of said lake with a spear, net, trap net, set line, jack or artificial light of any kind, or with dynamite, giant powder, or any other explosive substance or combination of substances, it shall be *prima facie* evidence of the violation of said act."

Section 2 has no reference to the use, but simply to the possession of any of the things named in that section, whether they are used or not.

It appears plain that the intention was that if a person was found upon the waters with certain kinds of lines in his possession he should be *prima facie* guilty.

If a person is found upon the lake with a long line to which are attached numerous other short lines with hooks attached, he will be *prima facie* guilty of violating the act, because he would have in his possession "set lines or night lines;" but if he has in his possession ordinary hooks and lines he would not come within the provisions of section 2, because they are not among the implements prohibited.

The last clause of section 1 specifying "other devices" expressly excepts "the hook and line." And there is no prohibition in the law as to the manner in which a person can use an ordinary hook and line.

I have read the opinion of the State Game and Fish Warden published in the *American Fish and Game Warden* of January 15, 1892, and I believe with him that "the sticking the end of a pole in the mud or even attaching the line to a 'bob'" does not make or constitute what is known as a "set line" within the provisions of this statute.

I think the Game Warden states exactly what the intention of the Legislature was, when it passed this law, in that part of his opinion where he uses the following language:

"The principal reason for prohibiting the use of set lines was that many of our lakes were being robbed of their fish by the use of a long line stretched across the spawning beds, and having a large number of hooks attached by short lines, some of the lakes that were formerly alive with fish have been almost entirely cleaned out in this manner, thus inflicting incalculable damage to the State."

But it must be remembered that this is a penal statute, and that it must be strictly construed, and that it cannot be extended by construction beyond the plain intention of the Legislature. Simply because there are

certain evils, or supposed evils, if they do not come within the provisions of the statute, we cannot extend its intention for fear some wrong may be done.

Respectfully,
A. A. ELLIS,
Attorney General.

Who entitled to aid in the preparation of ballot—Where assistance to be given.

When an elector makes oath that he cannot read English, or is physically disabled, he is entitled, under section 32 of the general election law, to the aid of an inspector, but such aid and assistance are to be rendered in the presence of two of the other inspectors, within the *railing* but *outside* the *booth.*

An illiterate person is entitled to the same aid as one who is *blind* or *physically disabled.*

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, February 15, 1892.

J. K. RILE, ESQ., *Centreville, Mich.:*

DEAR SIR—Your favor of the 8th, received, asking whether the inspectors of elections might accompany an elector inside the booth to assist him in the preparation of his ballot, and also whether there can be any distinction made between a blind elector and an illiterate one.

Section 32 of the general election law provides that:

"When an elector shall make oath that he cannot read English, or that because of physical disability he cannot mark his ballot * * * his ballot shall be marked for him in the presence of at least two of the inspectors by an inspector designated by the board for that purpose who is not a candidate on said ticket."

Section 26 of the same act provides "When an elector shall not be challenged or shall have taken the necessary oath or affirmation he shall be permitted to vote. On entering the room the inspector holding the ballots shall deliver to him one of them, and on request shall give explanation of the manner of voting. * * * The elector shall then and without leaving the room, go alone into a booth which is unoccupied and indicate the candidates for whom he desires to vote."

In the first place the elector is entitled to aid in certain cases by some person designated for that purpose, but this aid is to be given in the presence of at least two of the inspectors. Section 32 of the statute does not contemplate that the inspector referred to shall go into the booth with the voter.

Section 26 expressly provides that if the elector goes into the booth, he shall "*go alone into the booth*" and prepare his ballot.

As to the question of whether an illiterate person should receive the same aid as one who is blind or physically disabled, I would say:

That if a party makes oath that he cannot read English, whether it is caused from illiteracy, physical disability, or by reason of his nationality, he is entitled to the aid provided for in section 32.

Section 1 of article 7 of the constitution, which declares the qualifications of an elector, does not prohibit any person from voting on account of illiteracy, physical disability, or by reason of nationality, if he is other-

wise qualified to vote. To deprive a man of assistance who was unable to make the selection by reason of some of the above infirmities, would be substantially a disfranchisement, and it is certain that the law never contemplated any such thing.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Who entitled to have name placed on the ticket.

A candidate for office should be placed in nomination by the electors of his district, and such nomination ought to represent the wishes of a respectable portion of such electors in order to entitle the ticket as a distinct party ticket to be printed on the ballot.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 15, 1892.

W. E. GRAY, ESQ., *Attorney, etc., Lake Linden, Mich.:*

DEAR SIR—Your favor of the 9th instant, asking how a person must be nominated in order to have his name printed on the official ballot, is at hand.

I think your question is partly answered by the decision of our Court in the case of Chateau vs. Board of Election Commissioners 50 N. W. Rep., 102.

The Court in that case said: "A candidate for the office of alderman ought to be placed in nomination by electors of his ward, and such nomination ought to represent the wishes of a respectable portion of such electors, in order to entitle the ticket as a destinctive party ticket to be printed upon the ballot."

I do not think it is necessary that a person should be nominated by what is denominated a "political party" in its strict sense, but it is sufficient if he is nominated by a respectable body of electors who are entitled to vote for him at the election.

Respectfully,
A. A. ELLIS,
Attorney General.

Townships—Authority of, to bond for payment of indebtedness.

The statutes of this State do not authorize townships to bond themselves to pay off their outstanding indebtedness. They are mere political organizations, and have no powers other than those granted them by the statutes.

The ordinary bonds of a township possess all the attributes of commercial paper, and authority to issue such paper cannot be conceded to townships unless authorized by express legislation, or by very strong implication.

Township bonds thus issued, without authority of legislative act, are invalid.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 24, 1892.

L. P. STERLING, ESQ., *Iron Mountain, Mich.:*

DEAR SIR—Your favor relative to bonding the township of Crystal Falls

in the Upper Peninsula, inclosing papers,and asking whether it is legal to bond a township for the purposes stated in the application, is received.

The papers which you inclose show that at a special meeting held in said township of Crystal Falls on the 21st day of December, 1891, the electors of said township voted "to bond the township of Crystal Falls for $15,000, for the purpose of paying the outstanding indebtedness of said township," which vote stood 61 for and 3 against.

The townships of this State are mere political organizations, created wholly by statutes, and for certain purposes of local government.

Commissioners of Highways vs. Martin, 4 Mich., 557.

They are vested with no franchises or special privilèges for their own benefit. They have only such powers as the statute confers or such as may be fairly implied or incident to those expressly granted.

Attorney General vs. Burrell, 31 Mich., 25.

There is no provision in our statute authorizing townships to issue bonds for the payment of their outstanding indebtedness. Municipal bonds are clothed with all the attributes of commercial paper.

I Dillon on Mun. Cor. Sec. 486.

The power to issue commercial paper cannot be conceded to townships which are mere political divisions unless it is authorized by express legislation or by very strong implication.

Mayor vs. Ray, 19 Wal. 468.
Hopper vs. Town of Covington, 8 Fed. Rep., 777.
Merrill vs. Town Monticello, 14 Fed. Rep., 628.
Claiborne County vs. Brooks, 111 U. S., 400.
Ottawa vs. Casey, 108 U. S., 110.
Dillon Mun. Corporations, Sec. 507.

Judge Dillon in his work on municipal corporations (section 125), says:

Whether there is power in municipal corporations to borrow money and to issue negotiable paper depends, we think, upon the legislative intent, to be collected from the statutes, general and special.

Where townships in this State have been desirous to issue bonds to pay their indebtedness, the Legislature, at its regular sessions, has been asked to pass special acts authorizing such townships to bond themselves. This universal practice clearly shows that the legistative intent was not to give any township authority to bond itself unless it was authorized so to do by an act of the Legislature.

The validity of township bonds issued to pay indebtedness without authority by legislative act, would be very questionable, and in my opinion such bonds are invald.

Respectfully,
A. A. ELLIS,
Attorney General.

Construction of election law—Application of general law to local elections.

The general election law applies to local elections and township meetings—Booths must be provided. Tickets to be furnished by local election commissioners. Tickets are to be printed at such place as commissioners order. Conventions and caucuses must be held at least five days before election. Only parties duly nominated are entitled to have their names printed on ticket. Independent candidates may use slips. Townships and election districts must be divided, and must not contain over five hundred electors.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 24, 1892.

Editor, of Independent:

DEAR SIR—There have been so many questions asked by local officers of various townships, incorporated villages and cities, ralative to the application of the general election law to local elections and town meetings to be held in the spring of 1892, that I desire to say to such officers, through the medium of your paper that:

Act No. 190 of the Public Acts of 1891, known as the general election law, as limited by Act No. 194 of the Public Acts of the same year, applies to all local elections held in the various cities, villages and townships of this State, and such elections must be held according to the provisions of said general law, so far as the same are applicable thereto. It is provided among other things, in section one of Act No. 194, that, "All the provisions of such general law relative to the board of election inspectors, the arrangement of polling places (which would include the providing and arrangement of booths), the manner of voting and receiving of votes, and the canvass and declaration of the result of such election, are made applicable to such municipal and township elections," but the time for opening and closing of the polls shall not be affected by reason of Act No. 190.

The time for opening and closing of the polls in township elections is controlled by section 704 of Howell's Statutes, which provides that:

"The polls shall be opened at nine o'clock in the forenoon, or as soon thereafter as may be, and shall be closed between the hours of three and six o'clock in the afternoon, and the inspectors shall cause proclamation to be made at least one hour before the closing of the polls, that the polls of the election will be closed at or within the specified hour, naming it."

Section two, of Act No. 194, provides that:

"The township board of each township, and such persons as shall be elected therefor by the common council of the various cities and villages in this State, shall be the board of election commissioners for such township, city or village respectively, and shall perform such duties relative to the preparation and printing of ballots as are required by law of the board of election commissioners of counties, and the like duties and privileges as are enjoined and granted by the laws governing general elections, upon the various committees of the different political organizations, are hereby prescribed for the city, village or township committees, in elections held pursuant" to said act; except that no vignette or heading for the ballot, other than the name of the party shall be necessary.

It will be necessary to hold the caucuses for the nomination of candidates at least five days before election day, as section three of the act provides that "the names of candidates shall be given in by the committees of

the various political organizations, to the board of election commissioners of such municipality, not less than five days before each election, and the proof copy of the ballot shall be open to the inspection of the chairman of each committee at the office of the township clerk, and city or village clerk or recorder, not less than two clear secular days before such election."

The ticket must be printed in the same form as is provided in the general law, and the board of election commissioners for the township, city or village, must furnish the ticket. They can get the printing done at such place as they choose.

The words "political organizations" or "political party" used in this act, must be construed to mean any respectable body of citizens who are electors of any township or election district, and who assemble themselves together in the manner provided by the law, and hold a nominating caucus or convention.

Hence it is only necessary, in order for a person to have his name printed upon the ticket, that he should be nominated by a respectable body of electors properly assembled, who are entitled to vote for him at the election.

Any person who is not nominated, or who is placed in nomination by persons who reside outside of his election district, would not be entitled to have his name printed on the ticket.

It is not intended, however, that any person who desires to run for office shall be prohibited from furnishing slips, or seeking, within the provisions of the law, to have his name written or pasted on the ticket by electors when they are preparing their ballots in the booths. All such votes and the vote for any person, when on the ballot, should be counted under the same directions as govern the counting of votes for regular candidates whose names are printed on the ballots.

By section 4, of Act No. 190, it is provided:

"No election district or voting precinct under the provisions of this act shall contain more that five hundred electors according to the poll lists of the last preceding general election. When any election district or voting precinct shall contain over five hundred electors it shall be the duty of the township board in townships, and the city council in cities, to divide such voting precinct into two or more election districts."

In case the division is made in a township or incorporated village, the provisions of chapter eight of Howell's Statutes, are to apply and govern such division.

If the division is made in cities, and there are no special provisions in the city charter existing relative thereto, then the division, the election commissioners, and the election inspectors, and all matters arising by reason of the division, must be provided for by ordinance of the common council. The common council has power to make all necessary rules and regulations in connection therewith, to fully carry out the provisions of the law.

In all voting precincts in cities where there are special provisions in the charter for designating inspectors of election, in cases of division of voting precincts, such inspectors should be designated as directed in the charter and would be the inspectors of election under the law.

Respectfully,
A. A. ELLIS,
Attorney General.

Intoxicating liquors—A five hundred dollar tax permits dealers to sell beer at wholesale and retail.

Under section 1 of Act No. 313 of the Public Acts of 1887, a person who has paid the five hundred dollar tax is entitled to sell intoxicating liquors at retail, and malt and brewed liquors at both wholesale and retail.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 24, 1892.

W. A. HARRINGTON, ESQ., *Prosecuting Attorney, Gaylord, Mich.:*

DEAR SIR—Your favor asking: "Has a person who is engaged in the liquor business and paid the tax on both malt, brewed and spirituous liquors, of $500, the right to sell beer at wholesale and retail" is received.

Section 1 of Act No. 313 provides for the following tax upon the sale of liquors: "Upon the business of selling or offering for sale spirituous or intoxicating liquors, or mixed liquors by retail, * * and any malt, brewed or fermented liquors, $500 per annum; upon the business of selling only brewed or malt liquors at wholesale or retail, or at wholesale and retail, $300 per annum."

It is further provided in the same section that "No person paying a tax on spirituous and intoxicating liquors under this act shall be liable to pay any tax on the sale of malt, brewed or fermented liquors."

The statute requires a tax of $500 upon the sale of spirituous liquors by retail, and the sale of malt and brewed liquors without specifying whether the sale of the latter shall be at wholesale or retail.

A person who pays the tax to sell beer, pays $300. This will entitle him to sell at wholesale and retail, and if, after he has sold beer in this way for six months, he wishes to sell spirituous liquors, it has been held by this department that he would be entitled so to do, upon the payment of the *pro rata* tax for the remaining six months. If this course was taken, there can be no question but what he would be entitled to continue the selling of his beer by wholesale and retail.

It seems to me that it logically follows that a person who has paid the $500 tax, is entitled to sell intoxicating liquors at retail and beer at both wholesale and retail.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Election law—How ballots to be furnished—Printing of tickets—Instructions at the head of ballot—Members of the election boards can not be candidates for office—Marking of ballot—Use of slips.

The printing of the ballots for township, village, or city officers is to be done by the board of election commissioners of the township, city or village.

The tickets of the various parties must all be printed on the same ballot under proper headings. Instructions must be placed at the head of the tickets and should be printed in long primer type.

If all the regular members of the election board are candidates for office, the electors must appoint some disinterested elector as a member of the board to assist the voters in the preparation of their ballots.

The same rules for the preparation of ballots govern at spring elections as are provided in the general law.

Instructions how to vote and the counting of votes under certain assumed circumstances.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, Feb. 24, 1892.

To Inspectors of Election, and Electors:

GENTLEMEN—Your many questions relative to the manner of furnishing ballots, voting and counting votes under the new election law have been received, and in reply, in order to assist the officers and voters as much as possible, I have selected the questions presented by the township clerk of White Rock, together with certain questions, with tickets inclosed, from various parts of the State. And believing that the information sought therein will embrace the information asked by election officers and voters generally, I here repeat the questions, produce the tickets, and answer the questions involved, as follows:

1. "Does the county board of election commissioners have anything to do with our spring election?"

If there are no candidates excepting township officers, I answer, no.

The printing of ballots is to be done by the board of election commissioners of the township, city or village.

2. "Does each party have to have their own ticket as formerly, or do all parties have to have the names of their candidates on one ballot?"

The tickets of the various parties must all be printed on the same ballot as indicated in the public acts of 1891, page 261, with the exception that no vignette is required.

The instructions must be placed at the head of the tickets, and should be printed in long primer or larger type, so that they can be easily read. The size of the type indicated in the session laws of 1891 was the result of a lack of space in which to print the official ballot and get it upon one page. There is nothing in the law requiring the small type there used. The session laws of the State are required to be printed in long primer. See section 10 of Howell's Statutes. I speak of this because I observed on the different ballots forwarded to me, that the same class of small type is used.

3. "In case all of the election board are candidates for office, who will assist voters who ask assistance to fix their ballots?"

Such a case must not exist. If all the regular members of the election board are candidates for office, one of the board must retire and the electors, under section 2, must elect some disinterested elector as a member of the board to assist voters in the preparation of their ballots.

4. "Does a voter have to put a cross opposite the name of each candidate he wishes to vote for at the spring election?"

The same rules for the preparation of ballots govern, as are provided in the general law.

If an elector desires to vote a straight ticket, all that is necessary for him to do is to put a cross thus, (**X**), in the square under his party name.

A cross (**X**) in the square under the party name indicates that the elector votes for every man whose name is not erased on the ticket under the cross (**X**) on his ticket.

A person is not obliged to put a cross (**X**) under the head of the ticket at all; but if he does not put a cross (**X**) under the head of the ticket his vote will then only be counted for candidates opposite to whose names he makes a cross (**X**). If a person puts no cross (**X**) at all at the head of his ticket there is no necessity of striking any names off from the ticket, as the vote would only count for the names actually indicated by the cross

(X) opposite the name. If, however, he puts a cross (X) under the name of the party, it is absolutely necessary that he erase from the ticket under the cross (X), the names of all persons for whom he does not desire to vote, otherwise, inasmuch as the cross (X) under the party name indicates that he votes for all of the men on the ticket, if he puts a cross before any other names on any other ticket, the result will be voting for two men for the same office, in which case neither vote will be counted.

A person who desires to vote for a person on another ticket, and who has put a cross under his party name on his ticket, can only do so by erasing from his party ticket the name of the candidate for whom he does not desire to vote; otherwise the placing of a cross before the name of the opposite candidate will be treated as voting for two men for the same office and neither will be counted.

A person may by carelessness or mistake even do worse than vote against one man on his own ticket; he may vote against two or three at the same time, for whom he desires to vote, and lose his vote for those he is intending to help, for instance: If there are three men running on a local ticket for trustee for full term, and a person puts a cross (X) at the head of his ticket and then desires to vote for one of the men on another ticket for trustee and placed a cross (X) opposite the name of such trustee and omitted to strike off from his own ticket the name of the candidate for whom he did not desire to vote, the vote cannot be counted for anyone of the four persons for whom he has voted. By voting for a man on the other ticket and not indicating on his own which man he would reject, it is impossible for the inspectors of election to tell which three out of the four trustees was his choice. He was only entitled to vote for three trustees. He has voted for four, and all must be rejected.

The same result would be reached in many counties in voting for circuit court commissioners and coroners where two are elected, and in all townships at the coming spring election where four constables will be on each ticket. If a person puts a cross in the square at the head of his ticket he votes for each constable on his ticket, and if, without striking off one of the names, he places a cross (X) opposite the name of another constable under another party head, he would be voting for five constables, and his vote would have to be thrown out and treated as a blank as to all five constables. When a person desires to vote for a candidate not on his party ticket he must observe one of two rules:

1. Put a cross (X) under your party name, and strike off from your ticket the names of the candidates for whom you do not wish to vote, and write the name of the candidate for whom you desire to vote in the space under the name erased, or place a cross (X) opposite the names of the candidates on the other ticket for whom you desire to vote.

2. Do not put any cross (X) at all under your party name, but put a cross (X) on the tickets opposite the name of each candidate whose name appears on any of the tickets and for whom you desire to vote, remembering that you can not vote for two men for the same office when there is only one to be elected.

A person who observes either of these two rules will have no trouble at all in voting for any candidate on any ticket for whom he desires to vote.

Any person whose name is printed on the ticket has no right to use slips, as the law provides the manner in which electors shall vote for such candidate.

I give below copies of tickets with instructions at the head of the first one, and under each ticket an explanation as to how it should be counted.

OFFICIAL BALLOT.

INSTRUCTIONS.—First, mark or stamp a cross [X] in the square under the name of your party at the head of the ballot. If you desire to vote a straight ticket, nothing further need be done. If you desire to vote for candidates on different tickets, also erase the name of the candidate on your ticket you do not want to vote for and make a cross in the square before the name of the candidate you desire to vote for, or write his name in the space under the name erased. A ticket marked with a cross under the party name will be deemed a vote for each of the candidates named in such party column whose name is not erased. Before leaving the booth, fold the ballot so that the initials of the inspector may be seen on the outside.

NAME OF OFFICE VOTED FOR.	REPUBLICAN TICKET. ☐	PEOPLE'S TICKET. ☐	DEMOCRATIC TICKET. ☐
Justice of the Peace	☐ ~~FRANK E. CAWLEY.~~	[X] AMERISA T. NICHOLS.	☐ ZOPHAR SIMPSON.
Highway Commissioner	☐ ~~DANIEL STANINGER.~~	[X] HENRY M. SMITH.	☐ ISAAC S. WEST.

The voter in this case has voted for justice of the peace and highway commissioner on the People's ticket, and for no other candidate. Striking out the name of Mr. Cawley and Mr. Staninger on the Republican ticket has no effect and was entirely unnecessary, there being no cross (X) in the space under the party name on the Republican ticket. When a cross (X) is placed under the party name it indicates that the voter votes for every man on the party ticket whose name is not erased; and where a cross (X) is placed before the name of a candidate on the other ticket, it indicates a vote for such candidate, and the object of striking out the name on the party ticket where a cross (X) is placed under the party name, where a person desires to vote for a candidate on the other ticket, is to avoid casting a vote for two men for the same office. But where there is no cross (X) placed under the party name, the vote is only counted for those candidates before whose name a cross (X) is placed.

NAME OF OFFICE VOTED FOR.	REPUBLICAN TICKET. ☐	PEOPLE'S TICKET. ☐	VILLAGE TICKET. ☐
President	☐ ROBERT G. LYON.	☐ ORSON B. RANDALL.	☐ ORSON B. RANDALL.
Trustee for full term	☐ FRANK MILLER.	☐ NICHOLAS J. VAN PATTEN.	[X] LUCIUS E. HOLLAND.
Trustee for full term	[X] LORENZO D. BUCK	☐ RICHARDSON J. RYAN.	☐ WILLIAM HOXIE.
Treasurer	☐ THOMAS DUNCAN.	☐ ~~JOHN L. MILLER.~~	[X] JOHN W. GOLLAN.
Street Commissioner	☐ JAMES C. VALENTINE.	☐ ARCHIBALD CHAMBERS.	☐ CHARLES SEIL.
Assessor	[X] FREDERICK BOURNS.	☐ JAMES GRAHAM.	☐ JAMES GRAHAM.

The voter in this case voted for four men: Lorenzo D. Buck, trustee; Frederick Bourns, assessor; Lucius E. Holland, trustee; and John W. Gollan, treasurer.

There is no cross [X] at the head of the ticket, and hence, only the names that are checked would count. And as the voter has not indicated that he voted for any names, excepting those where a cross is placed before the name, it would be unnecessary to strike off the opposing names. All names, excepting the four mentioned, would be treated as blanks.

Name of Office Voted for.	REPUBLICAN TICKET. [X]	PEOPLE'S TICKET. [ ]	VILLAGE TICKET. [ ]
President	ROBERT G. LYON.	ORSON B. RANDALL.	ORSON B. RANDALL.
Trustee for full term	FRANK MILLER.	NICHOLAS J. VAN PATTEN.	LUCIUS E. HOLLAND.
Trustee for full term	LORENZO D. BUCK.	RICHARDSON J. RYAN.	WILLIAM HOXIE.
Trustee for full term	WILLIAM J. WELLS.	ALEXANDER ROCKHILL.	MICHAEL D. GROSSEL.
Clerk	JOHN H. BURGESS.	SILAS A. LANE.	[X] RUSSELL D. VARNUM.

The voter voted for every man on the Republican ticket, but he also voted for Russell D. Varnum for clerk, and did not erase the name of John H. Burgess for clerk. Hence, neither the vote for Varnum nor for Burgess would count. Each man on the Republican ticket, excepting Burgess, is entitled to one vote. All other names on any tickets should be treated as blanks.

NAME OF OFFICE VOTED FOR.	REPUBLICAN TICKET. ☐	PEOPLE'S TICKET. [X]	VILLAGE TICKET. [X]
President	☐ ROBERT G. LYON.	☐ ORSON B. RANDALL.	☐ ORSON B. RANDALL.
Trustee for full term	☐ FRANK MILLER.	[X] NICHOLAS J. VAN PATTEN.	☐ LUCIUS E. HOLLAND.
Trustee for full term	☐ LORENZO D. BUCK.	☐ RICHARDSON J. RYAN.	[X] WILLIAM HOXIE.
Trustee for full term	☐ WILLIAM J. WELLS.	[X] ALEXANDER ROCKHILL.	☐ MICHAEL D. GROSSEL.
Clerk	☐ JOHN H. BURGESS.	☐ SILAS A. LANE.	[X] RUSSELL D. VARNUM.
Treasurer	☐ THOMAS DUNCAN.	[X] JOHN L. MILLER.	☐ JOHN W. GOLLAN.
Street Commissioner	☐ JAMES C. VALENTINE.	☐ ARCHIBALD CHAMBERS.	[X] CHARLES SEIL.
Assessor	☐ FREDERICK BOURNS.	[X] JAMES GRAHAM.	☐ JAMES GRAHAM.
Constable	☐ CHARLES KRISELER.	☐ WILLIAM TRUAX.	[X] WILLIAM I. MOORE.

On this ticket the voter voted for every man on the People's ticket and every man on the Village ticket, and for some of them twice.

No man on the ticket is entitled to any credit, excepting Orson B. Randall and James Graham, who are entitled to one vote each.

As I have already said, when a cross is placed at the head of a ticket that is a vote for every man on the ticket, unless a name is erased. A check opposite the names in this case, no names being erased, would not change the rule; but the ticket must be considered of no effect for all candidates, with the exceptions above mentioned.

NAME OF OFFICE VOTED FOR.	REPUBLICAN TICKET. [X]	PEOPLE'S TICKET. [ ]	VILLAGE TICKET. [ ]
President	[ ] ROBERT G. LYON.	[ ] ORSON B. RANDALL.	[ ] ORSON B. RANDALL.
Trustee for full term	[ ] FRANK MILLER.	[ ] NICHOLAS J. VAN PATTEN.	[X] LUCIUS E. HOLLAND.
Trustee for full term	[ ] LORENZO D. BUCK.	[ ] RICHARDSON J. RYAN.	[ ] WILLIAM HOXIE.
Trustee for full term	[ ] WILLIAM J. WELLS.	[ ] ALEXANDER ROCKHILL.	[ ] MICHAEL D. GROSSEL.
Assessor	[ ] ~~FREDERICK BOURNS.~~	[X] JAMES GRAHAM.	[X] JAMES GRAHAM.
Constable	[ ] CHARLES KRISELER.	[ ] WILLIAM TRUAX.	[ ] WILLIAM I. MOORE.

The cross at the head of the Republican ticket indicates that the voter voted for every man on the Republican ticket except Frederick Bourns, whose name is erased.

The check opposite the name of Lucius Holland indicates that the voter voted for Holland for trustee for full term, but it also appears that no name for trustee for full term was erased, hence the voter voted for four men for trustee for the full term. He was only entitled to vote for three. It is impossible to tell which three he prefers and no vote should be counted, but all should be thrown out.

It also appears that the voter voted for James Graham, whose name appears on both the Village ticket and the

ATTORNEY GENERAL.

People's ticket. The names being identical, the presumption is that it is the same man, and Mr. Graham would be entitled to one vote for assessor. As it was clearly the intention to vote for James Graham, only one vote would count.

Hence, the vote on this ballot should be credited one for every man on the Republican ticket, excepting the three for trustees and Bourns for assessor; and it should also be counted as one vote for James Graham for assessor.

The votes for trustees should all be rejected.

The instructions are placed at the head of the ticket for the assistance of the voter, and unless he fully understands the law he should carefully read the instructions before voting. After a voter enters the booth if he finds that he is unable to understand the instructions and mark his ballot so as to express his choice, he has the right to come out and receive the assistance from the board to prepare his ballot, authorized by Sec. 32 of of the general election law.

Respectfully submitted,
A. A. ELLIS,
Attorney General.

Election law—Who entitled to use slips.

A man who is nominated for trustee and who desires to run for president on another ticket should be treated, so far as the office of president is concerned, as though not on any ticket, and he is entitled to furnish slips to electors for himself for the office of president, and votes by slips should be counted.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 14, 1892.

On March 12th the Attorney General received the following dispatch:

"TAWAS CITY MICH. VIA. LANSING, *March 12, 1892.*

A. A. ELLIS, *Attorney General:*

We have one man on two village tickets running for president, another man is on one ticket for trustee. Can the man running for trustee use slips on the man running for president to elect himself over the candidate for president on Monday? Answer at once.

M. MURPHY,
Chairman Election Committee."

In answer to which, he telegraphed as follows:

"*March 13, 1892.*

M. MURPHY, *Tawas City, Mich.:*

Your dispatch not very clear. Please explain further.

A. A. ELLIS,
Attorney General."

In reply the Attorney General received the following telegram:

"TAWAS CITY, MICH., *March 13, 1892.*

TO ATTORNEY GENERAL ELLIS:

Yours received. We have two regularly nominated tickets, the same

president on both, and the trustee on one. Now can the trustee run for president by using pasters while he is regularly nominated as trustee, and not as president. In such case would his pasters count for president? Answer. M. MURPHY."

The Attorney General answered the above quoted telegram as follows:

"IONIA, *March 13, 18* :

M. MURPHY, *Tawas City, Mich.:*

The man who is running for trustee should be treated so far as office of president is concerned, as though not on any ticket, and it is my opinion he is entitled to furnish slips to electors for himself for office of president and that such votes should be counted.

A. A. ELLIS,
Attorney General."

Elections—Ballots for Circuit Judge—How printed.

Where by a special election a Circuit Judge is to be elected on the same day of the regular township meeting, it is the duty of the board of election commissioners of the township to provide two ballot boxes, and furnish ballots for Circuit Judge. Such ballots should not contain the names of local officers voted for at township meetings.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 14, 1892.

WILLIAM N. CROSS, ESQ., *County Clerk, Cheboygan, Mich.:*

DEAR SIR—In reply to your favor asking how tickets should be provided in the 33d judicial circuit, at which a Circuit Judge is to be elected at the coming election, I would say:

It is my opinion that a separate ballot box should be provided by the several townships and election districts for the judicial ticket. So far as the election of Circuit Judge is concerned, the provisions of Act No. 190 of the Public Acts of 1891 should be followed, and under such act the ticket for Circuit Judge should be printed alone and would be furnished by the board of election commissioners of each county in the judicial district. The ballot should not contain the name of local officers voted for at the township meetings, etc.

Section one of Act No. 190 expressly refers to elections at which Circuit Judges are to be elected, and although the election of Circuit Judge and the several local elections and township meetings may occur at the same time, and are conducted by the same officers, this would not authorize the printing of local tickets on the ballot containing the name of the Circuit Judge.

Under the circumstances of your case, it is the duty of the officers who act both as local officers of the township and inspectors of election of Circuit Judge, to so discharge the several duties imposed upon them that the interests of the people of the judicial circuit, and the local interests of the township shall be fully protected.

This will be done by providing two ballot boxes, and furnishing to each

elector two tickets, the one containing the name of Circuit Judge, and the other, the names of the several local candidates.

Very respectfully,
A. A. ELLIS,
Attorney General.

Citizenship—Children born abroad.

When a person's father came to this country and was naturalized, and then returned to Ireland and remained there until his death, and a son was born to him after his return to Ireland, said son living in Ireland until after he was twenty-one years of age, he is not a citizen of the United States. But if he immediately came to the United States when he became twenty-one, and adopted this as his country, he might be said to be a citizen of the United States.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 15, 1892.

ASA BOWEN, ESQ., *Mackinaw City, Mich.:*

DEAR SIR—Your favor asking "Is a person a citizen of the United States whose father was naturalized in the United States, but returned to Ireland and died there, he, the son, being born in Ireland and living there until he became of age before coming to this country," is received and considered.

Undoubtedly, by the law of nations, an infant child partakes of his father's nationality and domicile. But there are two difficulties in the way of applying this rule to the present case. In the first place, a parent's nationality cannot, especially when produced by naturalization, be presumed to be adhered to after a residence in the country of origin for a considerable time, followed by his death.

In the second place, the rule as to children only applies to minors, since when a child becomes of age he is required to elect between the country of his residence and the country of his alleged technical allegiance.

Under section 2172 of the revised statutes of the United States, which was originally enacted April 14, 1802, "The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof."

And by section 1993, originally passed April 9, 1866, "All children heretofore born or hereafter born out of the limits of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

If reliance is placed in the first clause of section 2172, his citizenship must fail since that clause applies only to children "dwelling in the United States."

If, however, he can be said to come under the second clause of section 2172, or under the more general terms of section 1993, we are met with the difficulty that he is no longer a "child," but of full age, and his citizenship is no longer derivative, but is a matter of personal election. If he had solemnly elected, on arriving at full age, to be a citizen of the United States, there would be strong reasons for saying that he would be a citizen of this country. But, on the other hand, if he made no such election, but remained in Ireland, it would be inferred that he accepted the Irish nationality, and he cannot be said to be a citizen of the United States.

This same question was submitted to Secretary of State Bayard, in 1885, and the above is substantially his holding on the question.

Respectfully,

A. A. ELLIS,
Attorney General.

Elections—Invalid where held under the old law.

Where a village election was held in the same manner as elections held under the old law, and none of the provisions of Act No. 190 of the Public Acts of 1891, as limited by Act No. 194 of the same year, were observed, the proceedings were without authority and should be treated as void and the pretended election as invalid.

The old officers of the corporation would hold over until their successors are elected and qualified.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 16, 1892.

WILLIAM P. PRESTON, ESQ., *President of the Village of Mackinac, Mackinac, Mich.:*

DEAR SIR—Your favor stating that at your village election held on the first Tuesday of March, there were no election commissioners appointed, no caucus or convention held, until the night before election, no booths used, no ballots used other than the old form of ticket, and that they were printed separate and distributed on the streets, that the voting was the same as under the old law, that neither the president nor any member of the council attended the election as the board of election inspectors, and that a majority of the electors believed that there could be no legal election held under such circumstances, did not nominate any ticket and refrained from voting at the election; and asking whether the parties voted for at this election were legally elected, or whether the present village officers hold over as provided for in the charter, and as to your authority to hold a special election, is received and considered.

There has not been a compliance with the law governing elections in any sense. The law governing municipal elections has been wholly disregarded, and as the proceedings were entirely without authority, they should be treated as absolutely void and the pretended election as invalid. The old officers will hold over until their successors are elected at some election having, at least, the semblence of a regular election.

I am inclined to believe, upon an examination of sections 2 and 5 of the act under which you are incorporated, that you might hold a special elec-

tion for the election of officers by the direction of the Common Council and on giving the notice provided in section 5 of the act.

Respectfully,
A. A. ELLIS,
Attorney General.

Elections—Power of inspector to give aid to voter—Where instructions to be given.

The member of the election board holding the tickets has the power to explain to voters the manner of voting.
Instructions to voters should be given outside the booths but within the railing.
A voter who is assisted by the inspectors in marking his ticket is not required to go into the booth.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 16, 1892.

HON. PETER GILBERT, *State Senator, Sterling, Mich.:*

DEAR SIR—In municipal elections the names of the candidates of various tickets should be placed in separate columns in the same manner as on the State ticket.

The member of the election board holding the tickets has power to explain to voters the manner of voting (see section 26), and one of their number, who is not a candidate for any office, should be appointed by the board to mark the ballots in the presence of at least two of the inspectors. (See section 32). These sections apply to and cover all the assistance and would also limit the aid that could be given.

Instructions to voters by the inspector should be outside of the booth but within the railing. A voter who is assisted by the inspectors to mark his ticket is not required to go into the booth.

Respectfully,
A. A. ELLIS,
Attorney General.

Elections—Affidavits of expenses need not be filed by township or local officers.

The provision of Act No. 190 of the Public Acts of 1891, making it the duty of candidates to file affidavits of election expenses, do not apply to city and township elections.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 16, 1892.

H. C. HAMILL, ESQ., *Alpena, Mich.:*

DEAR SIR—In reply to your question as to whether the provision of the election law, making it the duty of candidates to file affidavits of election

expenses, applies to city and township elections where no county or State officer is to be elected, I would say:

I find no provision in Act No. 194 of the Public Acts of 1891, making it the duty of the candidate to file affidavits of election expenses in city and township elections. That act is quite specific as to the extent that Act No. 190 of the Public Acts of 1891 shall apply.

The law does not provide any place for filing such affidavits, if made by city and township officers, nor does it refer in any manner to the candidate for office, nor enjoin upon him any of the duties which are prescribed by the general law for State and county officers. That part of the law relative to such statements being penal in its nature, I do not believe that it can be extended by construction. I therefore conclude that city and township candidates are not required to file such statements.

Respectfully,
A. A. ELLIS,
Attorney General.

Elections—Rules for preparation of ballots.

The county boards of election commissioners have nothing to do with the printing of ballots for township officers, but it should be done by the election commissioners of the township.

In case all the election board are candidates for office one should retire and the electors should elect some disinterested elector to assist in the preparation of ballots.

Rules for marking ballot.

One of two rules must be observed where a person does not desire to vote a straight ticket:

1. Put a cross (X) under the party name, and strike off from the ticket the name of the candidate for whom it is not wished to vote, and place a cross (X) opposite the names of the candidates on the other ticket for whom it is desired to vote.
2. Do not put any cross (X) at all under the party name, but a cross (X) on the tickets opposite the names of each candidate for whom it is desired to vote.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 18, 1892.

R. MUMFORD, ESQ., *Township Clerk, White Rock, Mich.:*

DEAR SIR—Your favor duly received.

I repeat your questions and give answers as follows:

1. "Does the county board of election commissioners have anything to do with our spring election?"

If there are no candidates excepting township officers, I answer, no.

The printing of ballots is to be done by the board of election commissioners of the township, city or village.

2. "Does each party have to have their own ticket as formerly, or do all parties have to have the names of their candidates on one ticket?"

The tickets of the various parties must all be printed on the same ballot as indicated in the public acts of 1891, page 261, with the exception that no vignette is required.

3. "In case all of the election board are candidates for office, who will assist voters who ask assistance to fix their ballots?"

Such a case must not exist. If all the regular members of the election board are candidates for office, one of the board must retire and the electors must elect some disinterested elector as a member of the board, to assist voters in the preparation of their ballots.

4. "Does a voter have to put a cross opposite the name of each candidate he wishes to vote for at the spring election?"

The same rules for the preparation of ballots govern, as are provided in the general law.

If an elector desires to vote a straight ticket, all that is necessary for him to do is to put a cross (**X**) in the square under his party name.

A cross (**X**) in the square under the name indicates that the elector votes for every man whose name is not erased on the ticket under the cross (**X**) on his ticket.

A person is not obliged to put a cross (**X**) under the head of the ticket at all; but if he does not put a cross (**X**) under the head of the ticket his vote will then only be counted for candidates opposite to whose names he makes a cross (**X**). If a person puts no cross (**X**) at all at the head of his ticket there is no necessity of striking any names off from the ticket, as the vote would only count for the names actually indicated by the cross (**X**) opposite the name. If, however, he puts a cross (**X**) under the name of the party, it is absolutely necessary that he erase from the ticket under the cross (**X**), the names of all persons for whom he does not desire to vote, otherwise, inasmuch as the cross (**X**) under the party name indicates that he votes for all the men on the ticket, if he checks any other names, on any other ticket, the result will be voting for two men for the same office, in which case neither vote will be counted.

A person who desires to vote for a person on another ticket, and who has put a check under his party name on his ticket, can only do so by erasing from his party ticket the name of the candidate for whom he does not desire to vote; otherwise the checking of the opposite candidate will be treated as voting for two men for the same office and neither will be counted.

A person may by carelessness even do worse than voting for one man on his own ticket, for instance; if there are three men running on a local ticket for trustee for full term, and a person puts a cross (**X**) at the head of his ticket and then desires to vote for one of the men on another ticket for trustee and placed a cross (**X**) opposite the name of such trustee and omitted to strike off from his own ticket the name of the candidate for whom he did not desire to vote, the vote cannot be counted for anyone of the four persons for whom he has voted. By voting for a man on the other ticket and not indicating on his own which man he would reject, it is impossible for the inspectors of election to tell which three out of the four trustees was his choice. He was only entitled to vote for three trustees, he has voted for four and all must be rejected.

The same result would be reached in many counties in voting for circuit court commissioners and coroners where two are elected, and in all townships at the coming spring election where four constables will be on each ticket. If a person checks the head of his ticket he votes for each constable on his ticket, and if, without striking off one of the names, he places a cross (**X**) opposite the name of another constable under another party head, he would be voting for five constables, and his vote would have to be thrown out and treated as a blank as to all five constables.

One of two rules must be observed where a person does not desire to vote a straight ticket:

1. Put a cross (**X**) under your party name, and strike off from your ticket the names of the candidates for whom you do not wish to vote, and place a cross (**X**) opposite the names of the candidates on the other ticket for whom you desire to vote.

2. Do not put any cross (**X**) at all under your party name, but a cross (**X**) on the tickets opposite the name of each candidate for whom you desire to vote.

A person who observes either of these two propositions will have no trouble at all in voting.

Respectfully,
A. A. ELLIS,
Attorney General.

Resignation—When complete—Resignation of justice of the peace—Disposition of cases.

Where a justice of the peace resigns, his business is transferred to the justice of the peace of the same township whose office will soonest expire.

The common law rule that the resignation of a public officer is not complete until the proper authority accepts it, is in force in Michigan, and a justice of the peace, after he tenders his resignation, must perform his duty until his resignation is accepted.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 18, 1892.

FRED M. HARLOW, ESQ., *Springport, Mich.:*

DEAR SIR—Your favor stating that you have resigned the office of justice of the peace, and asking:

First, "If my work (actual suits pending) ceases at the time of my resignation?"

Second, "Can the township board compel me to act with them at the coming township meeting?" is received and considered.

Both questions would depend on whether your resignation has been accepted by the township board. If it has, for an answer to your first question, I would refer you to Act No. 114 of the Public Acts of 1885 which provides: "That in case a vacancy from any cause shall occur in the office of a justice of the peace, all causes and matters pending before him at the time such vacancy shall occur shall stand transferred to the justice of the same township or city whose term of office shall soonest expire."

Section 727 of Howell's Statutes provides that:

"Resignations of all officers elected at township meetings shall be in writing, signed by the officer resigning, and addressed to the township board, and shall be delivered to and filed by the township clerk."

Section 649 provides that every office shall become vacant upon the resignation of the officer, but it nowhere declares when a resignation shall become complete. The common law rule that the resignation of a public officer is not complete until the proper authority accepts it, or does something tantamount thereto, such as to appoint a successor, seems to be in force in this State.

Edwards vs. United States, 103 U. S. 471.

Hence, I cannot say whether you would be compelled to act with the township board at the coming election or not, as I do not know whether the board has ever accepted your resignation. If they have accepted it, you are freed from any duties imposed by the office; if they have not, your

resignation is not complete and it would be your duty to act with the board and perform the duties of your office until they do accept it.

Respectfully,
A. A. ELLIS,
Attorney General.

Officers—Vacancy—Temporary absence of clerk.

The temporary absence of a township clerk and the removal of his deputy in his absence, does not authorize the township board to treat the office as vacant, and appoint another person to fill the office. An appointment under such circumstances would be illegal and without authority of law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 18, 1892.

WALTER HILL, ESQ., *Holton, Mich.:*

DEAR SIR—Your favor stating that the clerk of your township wished to be absent from the township for the period of four months, and he thereupon appointed a deputy, which deputy, before the return of the clerk, removed into another township, and thereupon the township board appointed a clerk, and asking whether such appointment is valid, is received and considered.

There was no vacancy in this case. The office of township clerk shall become vacant only upon the happening of certain specified events, among which are ceasing to be an inhabitant of this State, or if the office be local, as it is in this case, of the district, county, township, city or village in which he shall have been elected or appointed.

I understand by your letter that at no time did the clerk intend to make his absence any more than temporary, and that he actually did return at the end of four months.

I am of the opinion that no vacancy existed, such as the township board would be authorized to fill.

The removal of the deputy township clerk into another township simply leaves the clerk without a deputy, but does not leave the office of clerk vacant, as the deputy clerk does not in any sense become the clerk of the township. He is only authorized to perform the duties of the clerk in certain cases.

If the vacancy existed, such as would authorize the township board to make the appointment, it existed just as much prior to the removal of the deputy clerk into another township as it did afterwards.

In my opinion the appointment of the board was unauthorized, and the old township clerk is clerk of your township.

Respectfully,
A. A. ELLIS,
Attorney General.

Elections—Manner of voting ticket.

Where a person places a cross at a head of a ticket, he votes for every man on that ticket; and if he places a cross opposite a name on another ticket, and does not erase the corresponding name on his own ticket, neither should be counted.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 19, 1892.

C. F. BEELER, ESQ., *Caledonia, Mich.:*

DEAR SIR—Your favor enclosing ticket, a copy of which, so far as is needed for explanation, is placed below, is received.

Name of office voted for.	Citizens' Ticket. [X]	Peoples' Ticket. ☐
For President	☐ Allen B. Betzner.	☐ Wm. H. Seibert.
For Treasurer	☐ Aaron Konkle.	☐ Aaron Konkle.
For Marshal	☐ Aaron Bechtel.	[X] Wm. Hammond.

The voter by placing a cross [X] in the square at the head of the Citizens' ticket, voted for every man on that ticket.

By placing a cross [X] before the name of William Hammond the voter votes for Mr. Hammond, but he has not erased the name of Mr. Bechtel and therefore, he has voted for two men for the same office, when there is only one man to be elected.

The ticket indicates that the voter intended to vote for both Mr. Hammond and Mr. Bechtel, and the vote should not be counted for either.

If the voter intended to vote for Mr. Hammond and not for Mr. Bechtel for marshal, he should have erased the name of Mr. Bechtel. As the ticket now stands it counts one vote for every man on the Citizens' ticket excepting Mr. Bechtel.

Respectfully,
A. A. ELLIS,
Attorney General.

School contract—Power of district board to make—Length of.

The old board has authority to make contracts with a teacher for the next year. A contract with a teacher for a longer term than is voted at the annual school meeting will be binding only for the period voted.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 19, 1892.

E. M. HOPKINS, ESQ., *Attorney, etc., Oakley, Mich.:*

DEAR SIR—Your favor stating that in August, the district board made a contract with a legally qualified teacher to teach their school for a period

of nine months, commencing the first Monday of September, 1891; that at the annual school meeting in September, the people voted to have only six months school which has now expired, and asking if the district was not bound by the contract to teach for nine months, and if the teacher could not continue and collect his pay for the remaining three months, is received and considered.

The district boards are authorized, and it is their duty, to employ qualified teachers necessary for the several schools. The provision authorizing the board to hire teachers, leaves the selection of teachers to the exclusive control of the district board, except so far as the annual meeting exercises lawful direction concerning the length of time. As was said in Cleveland vs. Amy, 50 N. W., Rep., 293: "The old board, therefore, had power to make such a contract for the ensuing year as should be voted at the annual school meeting." In that case the contract was for such period as authorized by the school meeting.

The district board might hire a teacher for the next year, but such a contract, so far as time is concerned, is necessarily subject to the will of the voters of the district at their annual meeting. Otherwise, I am at a loss to see the force and effect of the eleventh subdivision of section 27 of the General School Laws of 1889, which expressly provides that the qualified voters of any school district shall have power "at the first and annual meetings only, to determine the length of time a school shall be taught in their district during the ensuing year" with certain prescribed limitations.

To say that a district board might bind a district by a contract for nine months, would be virtually taking away the power given the qualified voters of the district to determine the length of school they should have for the ensuing year.

It is not in any way nullifying the provisions of the contract, because, as I said before, the district board has power to make a contract for only such time as the voters of the district may determine, and this contract must be presumed to have been made with reference to the existing law.

I am clearly of the opinion that the district board had no power to contract for a longer time than might be determined by the qualified voters of the district at their annual meeting, and that a contract for a longer period would be binding only to the extent of the time determined by the school meeting.

Respectfully,
A. A. ELLIS,
Attorney General.

State patients—Discharge of from Insane Asylum—When may be permitted.

Superintendents of the various insane asylums of this State are not authorized to remove patients who are non-residents of the State from the institution for the purpose of making room for other patients more in need of asylum treatment.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 22, 1892.

WILLIAM M. EDWARDS, ESQ., *Medical Superintendent, Kalamazoo, Mich.:*

DEAR SIR—Your favor asking what, in my opinion, would be the proper

disposition under the law of a patient who is a non-resident of the State, but is in the asylum and who has not fully recovered but who should be removed from the institution because there are other cases more in need of asylum treatment? is received and considered.

There seems to be no provision in our laws for such a case. The only provision found which authorizes the superintendents of the various asylums of this State to make room for urgent cases by removal, is either where the patient has a home and friends to care for him, or may be placed in the charge of the proper authorities of the county from which he came.

It would be a positive injury to the public to turn loose upon it an inmate who has neither home nor friends, and who is only partially recovered and not able to earn his own subsistence. The law never contemplated such a discharge. And in no case, where the person has not fully recovered, should he be discharged unless placed under some proper care. The only case in which a State patient could be discharged would be where he had fully recovered. The authorities of the institution have no power, in my opinion, to order him removed to make room for more urgent cases.

If it is necessary to make such removals, the Legislature must provide a place for their reception. But, under the law as it now stands, there is no authority to return them to any particular county, and if they have no home and friends within the State, they must, as a necessary consequence, be retained in the asylum until recovery is complete.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Use of slips.

Under the election law, no slips should be furnished by candidates whose names are printed on the ticket.

A person who desires to run for office on a "stub ticket," would have a right to furnish slips to the electors.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 22, 1892.

EDITOR OF YPSILANTIAN, *Ypsilanti, Mich.:*

DEAR SIR—The marked copy of your paper of March 3, came during my absence in the Northern Peninsula, and my attention was only called to it today.

In what I said in my circular about slips, you will observe that I was speaking about persons who desired to run for office, and who have not been nominated by any party, and whose names have not been printed on the ticket.

It seemed quite clear to me that the parties who drafted the law had forgotten the man who wanted to run for office on a "stub ticket." I concluded that, as there were no positive provisions in the law applying to such a person, he would have the right to furnish slips to the electors.

I am of the opinion that no slips should be furnished by candidates

whose names are printed on the ticket. Slips in such a case would be absolutely unnecessary.

It is a reasonable requirement that the elector should be required to strike a name off from his ticket and place a cross before the name of the candidate on the opposite ticket, if he desires to vote for a candidate not on his ticket and cannot write.

He can make a cross before a name as easily as he can use a slip. Hence, as to all such, no slip should be allowed. If the same rule applies to candidates whose names are not printed on the ticket, inasmuch as the voter must ordinarily prepare his ballot in the booth, and many are poor writers or unable to write, it practically amounts to saying that a person who is unable to control the caucuses or conventions shall not be allowed to run for office; or at least if he does run, he shall not use the methods in common use to get his name on the ticket.

I believe in giving every man an equal chance, even though he connot control a ward caucus or a county convention; and if a better man presents himself than the regular nominee the electors should have an opportunity to vote for him, unless the law clearly forbids; and in this case I do not think it contains any such prohibition.

Respectfully,
A. A. ELLIS,
Attorney General.

Transfer of State patients from the Wayne County Insane Asylum—Authority of Board of Charities to make such transfer.

If State patients, confined in the Wayne County Insane Asylum, develop homicidal tendencies to such an extent that their presence becomes a source of danger to others, the State Board of Corrections and Charities would have jurisdiction to issue an order for the transfer of such patients.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 22, 1892.

HON. E. O. BENNETT, *Medical Superintendent, Wayne, Mich.:*

DEAR SIR—Your favor stating that one Henry Engle, a patient under treatment in the Wayne County Insane Asylum as a charge upon the State of Michigan, has, on different occasions, attempted acts of homicide upon the patients under treatment in said Wayne County Insane Asylum, also upon attendants employed in and about said asylum, rendering his presence in said asylum a source of danger to other patients under treatment in said asylum: That on the 5th day of February, 1892, you petitioned the State Board of Corrections and Charities to issue an order for the transfer of said Engle from the Wayne County Insane Asylum to the Asylum for Criminal Insane at Ionia, but that the board, doubting their authority to act in the matter from the fact that the Wayne County Insane Asylum is not a State institution, although there are a large number of State patients now being supported at said institution at the expense of the State, and requesting my opionion on the authority of the board to act in such a case, is received and considered.

The statute under which the Board of Corrections and Charities is authorized to issue an order for the transfer of a patient, such as you describe, to the Asylum for Insane Criminals at Ionia, is section 28 of Act No. 190 of the Public Acts of 1883, as amended by Act No. 43 of the Public Acts of 1887, and would not in its terms seem to include any other asylum than the regular State institutions at Kalamazoo and Pontiac. The statute reads:

"The medical superintendents of either of the asylums for the insane of Michigan may, with the consent of their respective boards of trustees, make application to the Board of Corrections and Charities for an order for the transfer of any or all criminal insane persons, etc."

When this law was enacted there were only two insane asylums in the State, viz., the Kalamazoo asylum and the Pontiac asylum, and when the Legislature used the term "either of the asylums for the insane of Michigan," there can be but little question that they were referring only to the above named institutions. But since the enactment of this statute new laws have been enacted and an asylum for the insane has been established at Traverse City, and authority has been given to detain certain insane persons who are a charge upon the State, in the Wayne County Insane Asylum.

Although the statute giving power to the board to transfer patients, does not refer to the Traverse City Asylum or the Wayne County Asylum, yet I believe that, by amending the acts and allowing insane to be sent to these institutions, by implication the authority of the board is extended, and that as long as the State has authorized the reception of certain insane persons in the Asylum for Insane at Traverse City and in the Wayne County Insane Asylum who are a charge upon the State, that if such persons develop homicidal tendencies to such an extent that their presence is a source of danger to others, the same rules should govern for their transfer as from the main asylums at Kalamazoo and Pontiac; and that the State Board of Corrections and Charities has jurisdiction to entertain your petition.

Respectfully,
A. A. ELLIS,
Attorney General.

Traveling fees—Construction of the term—Expenses of School Commissioners.

The contingent expenses of a County Commissioner of Schools are limited to two hundred dollars.
The Board of Supervisors cannot legally allow traveling fees.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 22, 1892.

HON. FERRIS S. FITCH, *Superintendent of Public Instruction, Lansing, Mich:*

DEAR SIR—Your favor asking if "the words 'and no traveling fees shall be allowed the commissioner or any assistant visitor or school examiner' found in section 10 of Act No. 147 of the Public Acts of 1891, forbids the

payment of actual traveling expenses; or, is it to be understood as simply forbidding the allowance of anything in the way of mileage fees beyond actual expenses?" is received.

The commissioner is allowed his necessary contingent expenses for printing, postage, stationery, record books, and rent of rooms for public examinations, to be audited by the Board of Supervisors of his county, such expenses not to exceed two hundred dollars per annum.

This law authorizes certain expenses of the commissioner to be allowed by the Board of Supervisors, but it expressly prohibits the allowance of any traveling fee. And I believe that it was the intention of the Legislature to limit the contingent expenses to two hundred dollars, and hence, the board could not legally allow more.

Respectfully,
A. A. ELLIS,
Attorney General.

Election of members of the board of review—Repeal of general tax law.

The general tax law of 1889, under which members of the board of review were elected, was expressly repealed by Act No. 200 of the Public Acts of 1891, and the member of the board of review who was in office at the time Act No. 200 took effect, was, by reason of the repeal of that law, legislated out of office.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 22, 1892.

M. A. OWIN, ESQ., *Dalton, Mich.*

DEAR SIR—Your favor asking whether or not it will be necessary to elect two members of the board of review at this spring election, is received.

The general tax law of 1889, under which the present member of the board of review was elected, was expressly repealed by Act No. 200 of the Laws of 1891.

I am of the opinion that the member of the board of review who was in office at the time Act No. 200 took effect was, by reason of the repeal of that law, legislated out of office, and that it will be necessary to elect two members of the board of review at this spring's election.

One of the members of the board of review should be elected for one year and one for two years, and the offices should be so designated on the township ticket.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Residence of voter—Registration of voters—County Clerk, right of to take declarations of intention outside of office.

No person has a legal right to hire a man and bring him into the township ten days preceding the election for the purpose of working and voting for him, where there is no *bona fide* intention of making the township his residence. Such a person would not be a resident of the township.

Under the above circumstances, the board of registration would have a right, and it would be their duty, to refuse to register such person.

The County Clerk, or his deputy, has a right to receive declarations of intention anywhere within the county.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 24, 1892.

F. H. PETERS, ESQ., *Prosecuting Attorney, Newberry, Mich.:*

DEAR SIR—Your favor of March 21, containing the following questions is received.

I repeat the questions and answer them as follows:

1st. "Is a man a legal voter in a township who is hired by one of the candidates for office, and goes to work for such candidate ten days before said election, and with the understanding that he is to work for him during the said ten days, and then vote for him on election day, and as soon as that is done he, the next day after election, leaves the township?"

In reply to this question I would say that:

No person has a legal right to hire a man and bring him into the township for the express purpose of keeping him for ten days and then having him vote for some particular party or candidate, when it is understood that that is the object of his coming into the township. Such a person would not be a resident of the township. He would only be a transient for the purpose of performing a certain duty, and when that duty was performed, to depart, and in the case you suggest, it would be an illegal duty imposed upon him.

2d. "Would it be legal for the board of registration to refuse to register a voter coming into the township under those circumstances and for that purpose, even if the voter should swear that he is a *bona fide* resident of said township, when it is known to said board that he came there solely and only for the purpose of voting for some particular candidate, and not intending to reside there after he had so voted?"

To your second question I answer, yes.

Section 90 of Howell's Statutes, as amended by Act No. 161 of the Public Acts of 1883, only provides for the registration of a person on other days than the regular registration day, "if upon such examination as is required by the next following section of this act the supervisor, treasurer or clerk shall be satisfied that such applicant is a resident of the township, and otherwise qualified, and entitled to vote in such township at the next election to be held therein."

Section 92 of Howell's Statutes provides "Neither the board nor any member thereof, shall write or enter therein (referring to the registration book) the name of any person, nor suffer him to write or enter his name therein, whom they know or have good reason to believe not to be such resident and so qualified, nor shall any person knowingly or having good reason to believe himself not to be such resident and so qualified write his name therein."

Under the above sections it is the duty of the board of registration to pass upon the qualification of the elector, and unless they are satisfied that he is an elector, they ought not to suffer him to write his name or cause it to be written in the book of registration; but in the case that you have supposed, they are positively forbidden to write his name or to allow it to be written, because "when it is known to said board that he came there solely and only for the purpose of voting for some particular candidate and not

intending to reside there after he had voted" they have positive knowledge that he is not a resident of the township and does not intend to be.

See Warner vs. Board of Registration, 72 Mich., 398.

3d. "Has our Supreme Court decided that the County Clerk could not go outside his office for the purpose of giving the first papers to those wishing to become citizens, and if he did so that the one getting his first papers would not be an elector, and if they have so decided where will I find the decision?"

The Court has not held that a County Clerk could not go out of his office for the purpose of receiving declarations of intention to become a citizen; but, on the contrary, they have held that such declarations of intention could be taken before the clerk or the deputy anywhere in the county.

See Andrews vs. Circuit Judge, 77 Mich., 85.

Respectfully,

A. A. ELLIS,
Attorney General.

Election law—Caucuses—What constitutes a respectable portion of electors.

It is only necessary, in order for a person to have his name printed upon the ticket, that he should be nominated by a respectable body of electors, properly assembled, who are entitled to vote for him at the election.

Candidates for aldermen should be placed in nomination by the electors of his ward. What a respectable portion of the electors of the district would be, must depend very largely upon the number of voters in the district where the candidate is to be nominated.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 24, 1892.

FRED MACKENZIE, ESQ., *Editor, etc., Red Jacket, Mich.:*

DEAR SIR—Your favor of the 21st received.

It is to be regretted that people will ordinarily take advantage of laws framed really for their protection and benefit; yet, I do not see how it would be possible to hold very close lines on a political caucus or convention which nominate a local ticket.

In passing upon this question a few days ago. in a letter which was published in nearly every newspaper in the State, I used this language:

"The words 'political organizations' or 'political party' used in this act, must be construed to mean any respectable body of citizens who are electors of any township or election district, and who assemble themselves together in the manner provided by law, and hold a nominating caucus or convention.

"Hence it is only necessary, in order for a person to have his name printed upon the ticket, that he should be nominated by a respectable body of electors, properly assembled, who are entitled to vote for him at the election.

"Any person who is not nominated, or who is placed in nomination by persons who reside outside of his election district, would not be entitled to have his name printed on the ticket."

In speaking of the nomination of aldermen in the city of Detroit, in the case of Chateau vs. Board of Election Commissioners, 50 N. W. Rep.

102, the Court said: "A candidate for the office of alderman ought to be placed in nomination by the electors of his ward, and such nomination ought to represent the wishes of a respectable portion of such electors in order to entitle the ticket, as a distinct party ticket, to be printed upon the ballot."

In that case the candidate for alderman was placed in nomination by persons outside of his ward, and the Court held that he was not entitled to have his name printed on the ticket.

I apprehend that what the Court means by a respectable portion of "such electors" must depend very largely upon the number of voters in the district where the candidate is to be nominated. For instance, if there were 300 voters in the ward, ten voters could not be said to be any respectable portion of the electors of the ward, and unless the caucus or convention was called by giving public notice so that all the people of the ward or district might be notified, I hardly think that a board of election commissioners would be criticised for refusing to accept a ticket where they knew that it only represented a secret caucus, attended by less than five per cent of the voters of the ward. And still I have no right to lay down any general rule by which election commissioners could be governed. I must presume that they are honest men and will use every endeavor to give the people of the township or voting precinct all legal opportunity to run for office or to vote for candidates of their choice.

Respectfully,
A. A. ELLIS,
Attorney General.

Primary election law—Rules of caucus—Qualifications of electors.

The question as to whether an elector is entitled to vote at a primary election or convention depends entirely upon the rules of the caucus, if he is otherwise qualified.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 25, 1892.

On this date the following dispatch was received at the Attorney General's Office:

"*Fostoria, Mich., March 25, 1892.*

ATTORNEY GENERAL, *Lansing, Mich.:*

Can electors who have voted and placed in nomination a party ticket, come to a citizens caucus and vote again? Answer by wire.

RILEY W. KETH."

In answer to which the following telegram was sent:

"*Lansing, March 25, 1892.*

RILEY W. KETH, *Fostoria, Mich.:*

It depends entirely upon rules of citizen's caucus. Section 2, primary election law, provides if he shall swear to necessary qualifications as prescribed by the association holding primary, his vote shall be received. If citizen's caucus does not object, no one else can.

A. A. ELLIS,
Attorney General."

Foreign insurance companies—When authorized to do business in this State.

A steam boiler insurance is not in any sense an accident insurance, and the American Employer's Liability Insurance Company of New Jersey is not authorized by the statute under which it is organized to do steam boiler insurance in this State.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 26, 1892.

HON. WILLIAM E. MAGILL, *Commissioner of Insurance:*

DEAR SIR—As to whether the American Employers' Liability Insurance Company of New Jersey has authority to do boiler insurance in this State, I have to say:

By your certificate of authority they are authorized to do accident insurance, which term must be limited and interpreted by their charter.

The only question is, does the third subdivision of section fourteen of the insurance laws of the State of New Jersey, under which the American Employers' Liability Insurance Company is incorporated, authorize steam boiler insurance?

The section under which this company was incorporated authorizes it "to make insurance upon the health or lives of individuals, and against accidents and every insurance appertaining thereto, or connected with health, accident or life risks, and to grant, purchase or dispose of annuities."

The terms of this statute seems to me apply to insurance on lives of persons and injury to persons by accident, and not to the destruction of property by accident.

If I am right in my construction of the statute under which the company is organized, then it follows that they are not authorized to insure steam boilers against explosion and against loss of life or property resulting therefrom, on the ground that such insurance is accident insurance.

But it will be further observed that section one of Act No. 237 of the Public Acts of 1881 regulates "plate glass, accident, live stock, steam boiler and fidelity insurance." Each of these classes of insurance is separately described, and "steam boiler" insurance is not classified as accident insurance and in fact is not accident insurance any more than ordinary fire insurance is accident insurance. A steam boiler may explode by accident, and a fire may occur by accident, but the insurance on a steam boiler is given to cover "damage by explosion," not damage by accident. And in fire insurance, the insurance runs against "damage by fire" no matter what the cause of the fire; but insurance to persons in accident companies, the insurance runs against "damage by accident." Insurance on steam boilers is not damage by accident in the popular acceptance of the term, and is not, in my opinion included within the 3d subdivision of section 14 of the New Jersey Revised Statutes, under which this company is organized.

I am therefore of the opinion that the American Employers' Liability Insurance Company are not authorized to do boiler insurance in this State.

Respectfully,
A. A. ELLIS,
Attorney General.

Game law—Closed season—Statute construed—The words "from" and "until," meaning defined.

Where a statute prohibits fishing "from the first day of September in each year, until the first day of May following."

Held, That in the construction of such a penal statute, it would be better to give the offender the benefit of the doubt, and that, therefore, May first would be considered as one of the days of the open season.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 29, 1892.

HON. C. S. HAMPTON, *State Game and Fish Warden, Petoskey, Mich.:*

DEAR SIR—Your favor received, and the question that you submit is not without a good deal of doubt either way. The courts have held both ways upon the question. For instance, where a judge's order was obtained enlarging the time for pleading until the second day of the term, it was held that it included all of the second day.

Second Johnson's Cases, 225.

And again under a law which required the Governor to receive written sealed bids until the first day of July, held that all bids received after the 30th day of June must be rejected.

Webster *et al.* vs. French *et al.*, 12 Ill, 302.

In one case it will be observed that the word "until" included the day to which it refers; in the other case it excluded it.

It would seem to me in the construction of penal statutes it would be far better to give the offender the benefit of the doubt, and to hold that, where the statute is drawn in the negative form, that is: "It shall be unlawful to do a certain act until a certain time," the act prohibiting only extends until the commencement of the day named in the prohibitory clause.

In such case, of course, under the statute to which you refer prohibiting fishing "from the first day of September in each year, until the first day of May following," May first would be considered as one of the days in the open season.

This is a safe construction and seems to me is the one that should control in negative statutes until the Legislature shall settle the question.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Nomination of aldermen at an assembly of electors of the city.

Where a city ticket is nominated by the convention at large, and aldermen were nominated by electors of the respective wards present:

Held, That there is no objection to calling a convention of the members of the party in a city convention, nominating the city ticket, and then allowing the representatives

of the wards and the supervisor districts to nominate their candidates; at least it is not possible for any one else to object to such a proceeding, and, if such tickets are properly certified, the board of election commissioners should not assume to pass upon the regularity of the caucus.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 31, 1892.

D. C. WACHS, ESQ., *Grand Haven, Mich.*

DEAR SIR—Your favor stating "At a regularly called and advertised convention of the People's party for the purpose of putting in nomination city and ward officers in the city of Grand Haven, a full city ticket was nominated, and also aldermen for each of the four wards of the city, and other ward officers, by the electors of the ward present at such meeting, and a supervisor for the first and second wards and for the third and fourth wards, by the electors of the ward present at said convention.

"The ticket so nominated was properly certified by the chairman and secretary of the organization to the board of commissioners of said city. The said board are willing to print said ticket, except the names of the aldermen," and asking "Is it not the duty of the board to print the ticket so properly certified?" is received and considered.

I understand by your statement that a city ticket was nominated by the convention at large, and that the aldermen were nominated by electors of the respective wards present, and that the supervisors were nominated by electors from the supervisor's district—hence, the only question that could possibly arise under the statement of facts, is this:

1st. Can aldermen be nominated by electors of a ward at a city convention assembled in the city, but necessarily out of some of the wards where the aldermen are nominated?

2d. If this is not legal or irregular, is this a question that can be raised by the board of election commissioners?

In the case of Chateau vs. Board of Election Commissioners (50 N. W. Rep., 102) the Court held that an alderman must be nominated by an assembly of electors of his ward.

In that case Chateau had been selected by a sub-committee, which had been appointed by a committee of fifty, which was appointed at a mass convention of the citizens of Detroit. In fact Chateau was not nominated by an assembly of electors at all but was selected by a committee, and the selection was afterwards endorsed by another committee. The question as to how or where citizens should be called together was not before the Court.

The place, manner of calling a caucus or convention must necessarily rest with the political organization when there is no statutory regulation prescribed, and can only be controlled by the organization which will presumably call it so as to get as fair a representation of the electors of their party as possible.

I cannot see any impropriety, if a party so desires, in calling a convention of the members of the party in a city convention, nominating the city ticket, and then allowing the representatives of the wards and supervisor districts to nominate their candidates; and if the members of the party are agreed to pursue this course, I cannot see how anybody else can legally object.

It is the duty of the board of election commissioners when a ticket is

presented to them properly certified by the president and secretary of the political organization to print it just as it is presented.

See Shields vs. Jacob, et al., Election Com'rs, 50 N. W. Rep., 105.

And when a convention is called and a ticket is nominated, the board of election commissioners should not assume to pass on the regularity of the call. The statute does not give them any such authority, and such a power exercised by what must be, to a considerable extent, a political board, would be very dangerous to the community.

Where there is no fraud, our courts are very liberal in securing to every elector an opportunity to vote for the candidates of his choice, and it is my opinion in this case that it is the duty of the board of election commissioners to print the ticket presented in full, as a part of the official ballot.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Right of parties to have a challenger.

No party or political organization has a right to a challenger, excepting those who have a ticket in nomination at the election.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 31, 1892.

H. R. GREEN, ESQ., *Flushing, Mich.:*

DEAR SIR—I am requested by Mr. Sayre to write you my opinion concerning the right of a political organization, who has put no ticket in nomination, to have a challenger inside of the railing at the polls, as provided by section 23 of Act 190 of the Public Acts of 1891.

It is my opinion that it was the intention of the Legislature to extend that right only to the political organizations which have a ticket in nomination at the election.

The object of the law was to allow each organization, by a proper challenger, to protect its candidates. If a party has no candidates, it has nobody to protect, and hence would not be entitled to interfere with the election in the manner provided by said section.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Right of board to print ticket and to waive the time for filing the same—Right of election board to go behind certification of ticket.

Where a ticket is not certified as provided by law, the board has no right to print it as a part of the official ballot; but they would have a right to waive the time of the filing and permit the officers of the convention at which the ticket was nominated to make such certification: *Provided*, That it could be done so that it could be

printed and be open for inspection the requisite number of secular days before the election.

Where the ticket is certified in the manner provided by law, the board has no right or power to look back of the certificate and inquire into the regularity of the caucus; but it is then the duty of the board to print the same.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, March 31, 1892.

"UNION TICKET."

" Supervisor—John H. Rowe
Clerk—William E. Haugh
Treasurer—Henry E. Nye
Commissioner of Highways—William W. Muttun
Drain Commissioner—Edward A. Irophy
Justice of the Peace, full term—Lester L. Burton
Board of Review—John H. Wood (two years)
Board of Review—James W. Brown (one year)
School Inspector—James B. Brown
Constables—Hiram H. Hills, William N. Brophy, Jerry A. Hill, John Budd."

IRA T. SAYRE, ESQ., *Flushing, Mich.:*

DEAR SIR—In reply to your inquiries concerning the above ticket which has been filed with the board of election commissioners of the township of Flushing of the county of Genesee, to which is attached no certificate, and which is claimed to have been nominated by a caucus at which the officers were not sworn as provided by the primary election law, to wit:

First, Would the board have a right to print the ticket without any certificate being attached?

Second, Has the board the right to waive the time and permit the officers of the organization to certify to the ticket, provided that it is done so that the ticket may be printed and had for examination two clear secular days before election?

Third, Can the board take into consideration the question of whether or not the officers of the caucus at which the ticket was nominated were sworn as provided by the primary election law?

(1.) In my opinion, the board would have no authority to print this ticket as a part of the official ballot of the township, unless it is certified by the officers of the association or caucus as provided by the election law.

(2.) It is my opinion that the board would have a right to waive the time and permit the officers to certify to the ticket, provided it could be done so that the ticket can be printed and be open for inspection two clear secular days before election.

(3.) The law known as the primary election law was passed for the purpose of protecting people who were assembled together in caucuses from interference by those who were not authorized to vote at such caucuses.

If a person was nominated at a caucus where the officers were not

sworn, and afterwards elected, it is my opinion that the election would be good.

The law provides that the ticket shall be certified in order to authorize the board of election commissioners to print the same, and when that is done, I do not believe they have any right to look back of the certificate and inquire into the regularity of the caucus.

When the ticket is certified in the manner provided by law, it is then the duty of the board to print the same.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Nomination of aldermen by electors outside of his ward—Power of election commissioners to go behind certificate.

A person not placed in nomination by the electors of his election district is not entitled to have his name printed on the ticket.
It is the duty of the board of election commissioners to print all tickets duly certified by the secretary and chairman of the committee of the several political organizations.
The danger of a false certification is guarded by the penal provision of the law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE
Lansing, April 1, 1892.

HON. SHERMAN BOYCE, *Grand Haven, Mich.:*

DEAR SIR—In reply to your inquiry concerning the printing of the names of certain ward candidates on a ticket, lately nominated in the city of Grand Haven, and from which statement, when considered in connection with the statement made to me yesterday, I discover there is a dispute about the facts.

I would say that it is my opinion still, as expressed in the circular issued from this office, that:

"Any person who is not nominated, or who is placed in nomination by persons who reside outside of his election district, would not be entitled to have his name printed on the ticket."

But the question arises, who is to decide concerning the facts in the case, and can a board of election commissioners legally refuse to print the ticket; or should such questions be left for a decision by the courts?

It has been my opinion, and I still hold to that opinion, that where the ticket is properly certified by the chairman and secretary of the organization, the committee should print the ticket.

My reason for coming to this conclusion is this:

Section 10 of Act No. 190 of the Public Acts of 1891 provides:

"The board of election commissioners shall cause to be printed on the ballot the names of the candidates nominated by the regularly called conventions of any party. * * * All the names of parties so nominated shall be certified to by the chairman and secretary of the respective committees."

When the ticket is received, properly certified, if the board can go

behind the certification and test the regularity or legality of any caucus or convention, they would be vested with judicial functions, which, under the constitution of this State, must be vested in some court. And this board of election commissioners is not a court in any sense of the word.

As above stated, it is the duty of the chairman and secretary to certify to the names of the "parties so nominated." These words relate back to the words "regularly called convention."

The object of this provision clearly was that no names should be certified by the chairman and secretary to be nominated unless they were regularly nominated, and in order that any person who should certify names not properly nominated might be restrained from such a course of conduct and punished if he did so certify, it is provided in section forty-five:

"Any person who shall knowingly violate any of the provisions of this act * * shall be deemed guilty of a felony, and on conviction thereof shall be punished, etc."

With this restraining provision in the law, which seems to me broad enough to cover any false certification, I believe that the rights of the people would be fully protected if it is held, as I think it should be, that the board should print all tickets duly certified by the secretary and chairman of the committees of the several political organizations.

Respectfully,
A. A. ELLIS,
Attorney General.

Consolidation of corporations—Formation of new corporations—Franchise fee.

Two corporations consolidating under the provisions of Act 197 of the Public Acts of 1891, form a new corporation, such consolidation amounting to the surrender of the old charters of the companies, and therefore such new corporation should be required, before the evidence of its formation is filed with the Secretary of State, to pay the franchise fee fixed by Act 182 of the Public Acts of 1891.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 6, 1892.

HON. ROBERT R. BLACKER, *Secretary of State, Lansing, Mich.:*

DEAR SIR—Your favor asking whether the "Menominee Electric Light, Railway and Power Company" should be required to pay a franchise fee as provided in Act No. 182 of the Public Acts of 1891, is received.

The "Menominee Electric Light, Railway and Power Company" was formed under and by virture of Act No. 197 of the Public Acts of 1891, entitled, "An act to authorize the consolidation of street railway and electric light companies," by a consolidation between the "Menominee Electric Railway and Power Company" and the "Menominee Electric Light Company," two corporations organized under the laws of this State.

Section 1 of said Act No. 197 provides among other things, "That any street railway company may consolidate with any company organized and in operation under chapter one hundred and twenty-seven of said statutes, entitled, 'Electric Light Companies,' where such companies are located

and carry on business in the same town, city or village, and may form a single corporation. And for this purpose the directors of said two corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said two corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, and the names of those who shall be the first directors, which shall be deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than three, nor more than seven, the time and place of holding the first election of directors after the consolidation," etc.

Section 2 provides, "Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate thereof in the office of the Secretary of State, the said two corporations mentioned or referred to in this section shall be merged into the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein."

The consolidation of two corporations can take place only by the consent of the Legislature. When such consolidation does take place, it amounts to the surrender of the old charters by the companies and the formation of a new corporation.

Lanmon vs. Lebanon C. R. R. Co., 33 Pa. St. 42.

McMahan vs. Morrison, 16 Ind. 172.

State vs. Bailey, 16 Ind. 46 (79 Am. Dec. 410).

Section 1 of Act No. 182 of the Public Acts of 1891 provides "That every corporation or association hereafter incorporated by or under any general or special law of this State shall pay to the Secretary of State a franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation or association," etc.

The consolidation of these two companies was in law and in fact, in my opinion, the formation of a new corporation under the laws of this State, and such new corporation should be required, before the evidence of its formation is filed with the Secretary of State, to pay the franchise fee fixed by said Act No. 182 of the Public Acts of 1891.

Respectfully,

A. A. ELLIS,
Attorney General.

Officers, legislative, executive and judicial—Supervisors are legislative officers—Bribery.

A supervisor in the exercise of his duty as a member of the Board of Supervisors, comes within the term "legislative officer," and would be liable to punishment under section 9242 of Howell's Statutes, for corruptly accepting a bribe.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 7, 1892.

FARRIN C. CUMMINS, ESQ., *Prosecuting Attorney, Omer, Mich.:*

DEAR SIR—In reply to your favor of the 22d ult., requesting my opinion as to whether the term "executive, legislative, or judicial officer" in sec-

tion 9242 of Howell's Statutes, applies to supervisors or only to members of the Legislature, I would say:

Said section makes it unlawful for any such officer to corruptly receive or accept a gift or gratuity, etc., with the understanding that his vote shall be given in any particular manner, or upon a particular side of any question, etc., which is, or may be by law brought before him in his official capacity.

Our government is divided into three departments, executive, legislative and judicial, and all officers either belong to the executive, legislative or judicial department of the government.

A supervisor when acting with other supervisors upon the board exercises legislative functions and duties.

Greenman vs. Shiawassee Supervisors, 38 Mich., 642.
Larkin vs. County of Saginaw, 11 Mich., 87.

Campbell, Ch. J., in speaking of the terms "executive, legislative and judicial" as used in this statute, says: "The words apply, in our opinion, just as well to local as to State functionaries, the character of whose duties falls within any of these definitions. Under our system of local self-government, there is no public corporation that has not an organic connection with the State, or which does not require guarding to promote the interest of the whole body politic. * * * A construction which would take cities and other public corporations out of the protection of these laws would be a dangerous and not a natural one."

People vs. Swift, 59 Mich., 544.

It necessarily follows that a supervisor in the exercise of his duty as a member of the Board of Supervisors, falls within the term "legislative officer" and would be liable to punishment, under section 9242 of Howell's Statutes, for corruptly accepting a bribe.

Respectfully,
A. A. ELLIS,
Attorney General.

Practice—Return of subpœna on Sunday, not void.

A subpœna in a tax proceeding was made returnable on the 20th day of March which was Sunday, and objection being made that the process was void, or that it should be abated for that reason,

Held, That as nothing was required to be done upon the return day, and there being no possible danger of any one being misled, for that reason the subpœnas were not void, and the Circuit Judge should overrule the motion to dismiss the proceedings and permit the persons who had filed objections, to appear and file any other objection against the validity of the tax, other than to the return day of the writ.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 8th, 1892.

CYRUS A. HOVEY, ESQ., *Prosecuting Attorney, Port Huron, Mich.:*

DEAR SIR—Your favor of April 5th stating that: "About five hundred subpœnas have been issued by the County Clerk and made returnable on the 20th day of March, which is Sunday. The objection is made that this

process is void, or that it should be abated for that reason," and stating that my "opinion is desired by the Circuit Judge as to whether there is any escape from this objection," is received, and the question to which you refer investigated.

Chancery rule No. 9, provides:

"All process, unless otherwise directed, shall be made returnable on a day certain (except Sunday) either in vacation or in term, not less than ten days from the issuing thereof."

This rule excepts Sunday as a return day.

Rule No. 9 above referred to, is an old rule of the Chancery Court, and when that rule was first adopted a subpœna commanded a person to appear on a certain day to answer to a bill of complaint against him, "and to do further and to receive what said Court should consider in that behalf, and this you are not to omit under penalty of one thousand dollars, etc."

In 1879 the Supreme Court of this State adopted rule No. 122, which prescribes the form of the subpœna. The form in that subpœna abolishes, not only the penalty but also gives notice that the defendant in the case is to have his appearance entered with the Register of the Court either in person or by solicitor within twenty days after a certain day, which is termed in the subpœna the return day of the writ.

Nothing is to be done upon the day of the return, and the only question, the subpœna being irregular, is the mistake in the return day such a defect as a party can take advantage of in tax proceedings.

Since the adoption of rule one hundred and twenty-two, no danger can now exist of anybody being misled because the return day is Sunday.

Under a rule very similar to ours, in the case of Gould vs. Spencer, 5 Paige, 541, the Chancellor, in speaking of the subpœna which was made returnable on Sunday, said:

"The subpœna which was made returnable on Sunday was irregular, and did not warrant the entering of the order for an attachment, even if no notice of appearance had been given. This court, although legally open on all other days, cannot be open or held on Sunday, for any purpose whatever."

The Court in that case did not intimate that the subpœna was void, nor set it aside, and the reason assigned for its irregularity would have no application under a subpœna issued in the form of the one in question, which requires the party to appear within twenty days after the return day.

A case very much more in point was that of Kinney vs. Emery, 37 N. J. Eq., 340. That case was one where the subpœna was returnable on a legal holiday, which, under their statute, is treated the same, so far as the courts are concerned, as Sunday. The Court said:

"The defendant now moves to quash the writ on the ground that it was returnable on that day. No action of any kind is required of a defendant in a subpœna on the return day of the writ. He is not required to appear or enter an appearance then. On the contrary, he is informed by the note at the bottom of the writ that nothing is required of him at that time."

Their statute was very similar to our rule, and the Court overruled the objection.

The objection would not have been a good one at the common law.

Fano vs. Coken, 1 Henry Blackstone's Rep. 9.
Swann vs. Broome, 3 Burrow's Rep., 1595.

In the case of Ostertag vs. Galbraith (37 N. W. Rep., 637), it was held that a writ returnable on a legal holiday would not be void, but the return day would be the first day thereafter, in which the Court might legally transact business.

Several cases in the Michigan Reports, notably in the 35th, page 52, and the 41st, page 18, hold that such irregularities may be waived by the parties. These decisions at least go to the extent that the writ would not be absolutely void, but simply voidable.

The cases under consideration are tax cases, and under our statutes the defendant can only take exceptions to those errors which are to his prejudice.

The tax law under which you are now proceeding, is Act No. 195 of the Public Acts of 1889. Section 85 of that law provides in substance that:

"No tax assessed upon any property, or sale therefor, shall be held invalid * * on account of any irregularity, informality or omission, or want of any matter of form or substance in any proceeding that does not prejudice the rights of the person whose property is taxed."

It is my opinion in these cases that the subpœnas are not void; that the Circuit Judge should overrule the motion to dismiss the proceedings, and permit the persons who have filed objections, to appear within a given time and file their objections, if any, going to the validity of the tax, or any other reasons that they may have against the tax not relating to the return day of the subpœna; which order should be served upon the parties interested, or their solicitors, in the tax proceeding, a reasonable time before the time fixed for taking the final default; and that in default of appearance, regular defaults should be entered against all of the parties, and the Court should proceed in every respect as though the subpœna in the case had been made returnable on any other day of the week.

Proceedings against parties who have been served and have not appeared or filed objections, and parties who have been brought in by advertisement, should be conducted, after default is entered, the same as though the writ was returnable on any other day.

I only suggest an order concerning those who have appeared and filed exceptions, so that they may have a reasonable time to file objections to the tax after the Court has decided their motion to quash.

Respectfully,

A. A. ELLIS,

Attorney General.

Tax law—Assessment of mortgages—Sample assessment roll.

The description of the land should be entered on the roll but once. The different interests should be set opposite the land, and kept separate all the way though the roll. Where there is personal property, the name should be repeated. The land is to be assessed against both the owner and occupant. The same rule would apply, in reference to assessment, to land contracts and other obligations, as to mortgages.

The statement as to the value, etc., cannot control the assessor. He is to use his best judgment.

The State can collect the taxes out of the personal property of the owner of the mortgage when assessed to him.

The assessing officer should assess the mortgage to the owner, regardless of any contract between the mortgagor and mortgagee as to the payment of taxes.
The law applies to all mortgages, whether given before or since the passage of the law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 12, 1892.

JOHN W. EWING, ESQ., *Supervisor, Grand Ledge, Mich.:*

DEAR SIR—Your favor, stating that the assessing of mortgages, as an interest in real estate, under Act No. 200 of the Public Acts of 1891, has caused some uncertainty, and submitting a number of questions as to the manner in which such assessments should be spread upon the roll, is received.

To answer such inquiries, I have prepared a small assessment roll covering three descriptions of property, as follows:

In the first there is a mortgage upon the land, and it is occupied by the owner.

In the second there is no mortgage at all, and the land is occupied by the owner.

The third is owned by one man and occupied by another, and the land is mortgaged.

Section 15 of the law provides: "The supervisor shall estimate, according to his best information and judgment, the true cash value of every parcel of real property and interest therein, and set the same down opposite such parcel; the value of the interest of the owner of the fee less the value of the mortgage or other interest therein, shall be set down opposite the names of the owner and occupant, and the value of the interest in such real estate represented by a mortgage, deed of trust, or other obligation shall be set opposite the name of the owner of such interest."

It was the intention of the Legislature to have the two interests set opposite the land, but each in its proper column. There could be no use in adding together the interest of the holder of the land and the interest of the holder of the mortgage, and putting the total value in one column, as nothing is to be assessed against the two together.

Section 15 above quoted says that the supervisor shall estimate "the true cash value of every parcel of real property and interest therein and set the same down opposite such parcel," but following that command, without any further direction about estimating the separate value of each interest, is the direction how to set them down opposite the parcel; "the value of the interest of the owner of the fee less the value of the mortgage or other interest therein shall be set down opposite the name of the owner and occupant, and the value of the interest of such real estate represented by a mortgage, deed of trust or other obligation shall be set opposite the name of the owner of such interest." Hence, I understand the last part of the paragraph quoted as explanatory of the first part, as to how the value, as estimated, should be set down. The blanks for assessment furnished from the Auditor General's office were prepared with the above idea in view.

The description of the land should not be placed upon the roll but once, so that the taxes assessed against the interest of the fee, and also against the mortgage interest when properly carried out, shall appear on the right hand side of the roll opposite to the description of the land, so that any person whose land is assessed both for the fee interest and the mortgage interest may ascertain by examination of the column at the right hand

side of the roll, the whole amount that is assessed against each description.

When the land is mortgaged and occupied by the owner, there is written in the first column the names of the mortgagee and the owner and occupant; in the second column upon the proper line is written the name "mortgagee" and "owner and occupant" opposite their respective names. A bracket is used in the second column to indicate that both names stand opposite the description, and then on the line opposite the name of the mortgagee in the proper column, is written the value of the interest of the mortgagee in the land, and in the proper column opposite the name of the owner and occupant is written the value of the fee less the value of the mortgage.

The value of the fee less the value of the mortgage should be kept separate and assessed separately all the way through the roll, and the value of the interest of the mortgagee should be treated in the same way. Of course, in the assessment and also in the equalization, both interests should be considered by the assessing officer and the board, because the two interests combined should equal the true cash value of the land.

Where either of the parties has personal property the name can be repeated, and the property assessed as in the sample roll.

Where there is no mortgage, the land will be assessed at its true cash value, placing the value of the land in column No. 9, headed "Value of interest of the owner of the fee, less the value of the mortgage or other interest therein," but there being no mortgage to deduct, the value will represent the true cash value of the land. When the value is fixed by the board of review, the value of such land would be carried on the proper line in column number twelve.

The annexed sample assessment roll will fully illustrate what I mean by setting the value of each interest opposite the land, and each in its proper column.

It will be observed that there is a difference between the laws of 1889 and 1891 relative to the assessment of real estate in this: Under the law of 1889, real estate was assessed to the owner *or* occupant, while under the tax law of 1891, the land must be assessed to the owner *and* occupant, hence, when the land is owned by one man and occupied by another, and is also mortgaged, three names would have to appear upon the assessment roll opposite the description of land. The interest of the mortgagee would be carried out opposite his name, and the value of the interest of the fee, less the value of the mortgage should be carried out opposite the names of the owner and occupant, as the taxes could be collected out of the personal property of either. A proper bracket should be used to indicate that the land is assessed to both owner and occupant.

In placing the assessment on the roll a reasonable space should be left between the different descriptions of land and the persons interested therein and the following pieces and persons, so that there may be no uncertainty as to which names relate to each particular description of land or interest.

The directions above given relative to the assessment of mortgages would apply to the assessment of interests held in real estate represented by land contracts or other obligations, using proper words in column No. 2 to indicate the interest held.

In answer to the question how to to find the owner of the mortgage, I refer you to the following: Section 17 provides among other things that "It

Assessment Roll for the Township of Benona,

☞No more than one tract or parcel must be valued or taxed on the same line. Two descriptions *must not be joined* in ent *line*, as well as column, from *Real Estate*. Non-resident lands should be entered in numerical order, beginning with section. *re-assessment with red ink*, in the column of taxes to which it belongs, *above* the tax for the year for which this Roll is used, and same line as the name of the owner the word "Owner," on the same line as the name of the occupant the word "Occupant," and same line as the name of the owner (or occupant, if assessed to the occupant), enter the value of the interest of the owner, *i. e.*, 10 on the same line as the name of the mortgagee enter the value of interest represented by mortgage, deed of trust or other carefully studied and the directions therein contained should be strictly followed.—AUDITOR GENERAL'S OFFICE, 1892.

1	2	3	4	5	6	Acres in each Tract or Parcel.		Values as Assessed.		
								9	10	11
Name of Owner, Occupant and mortgagee.	Designate whether Owner, Occupant or Mortgagee.	DESCRIPTION.	Section.	Town.	Range.	7 Acres.	8 100ths.	Value of interest of owner of fee less value of mortgage or other inter'st therein. Dollars.	Value of interest represented by mortgage, deed of trust or other obligation. Dollars.	Value of Personal Estate. Dollars.
John Smith	Mortgagee	N E ¼ of the N E ¼	13	14	18	40			700	
James Brown	Owner and occupant.							800		
James Brown (personal)										1,000
Joseph Black	Owner and occupant	W ½ of the S E ¼	16	14	18	80		3,000		
Alfred Doe	Mortgagee								500	
William Jones	Owner	S W ¼ of the N W ¼	10	14	18	40		1,000		
Peter Roe	Occupant									
Peter Roe (personal)										300

in the County of Oceana, for the year 1892.

one valuation or tax, unless owned and OCCUPIED as one parcel. *Personal Estate* must be valued and taxes entered on a differ-one, and if the name of the owner is not known, they should be assessed as "owner unknown." Enter the amount of any in the column for "Remarks, state opposite each parcel *for what year the re-assessment was made.* In column 3 enter on the on the same line as the name of the mortgagee (if the premises are encumbered), the word " mortgaged." In column 9 on the the true cash value of the land less the interest represented by mortgage, deed of trust, or other obligation, if any. In column obligation. The attention of assessing officers is especially called to sections *15 to 21* of the Tax Law of *1891*, they should be

Values as fixed by Board of Review.				No. of School District.	State Tax.		County Tax.		Township Tax.		Highway Tax.		School Tax.		Dog Tax.				Total of Taxes.	
12 Value of interest of owner of fee less value of mortgage or other interest therein. Dollars.	13 Value of interest represented by mortgage, deed of trust or other obligation. Dollars.	14 Value of Personal Estate. Dollars.	15 Total. Dollars.		Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.
		800	800	2		32		32		40	1	60		80					3	44
		700	700			28		28		35	1	40		70					3	01
		1,000	1,000			40		40		50	2	00	1	00	1	00			5	30
		2,500	2,500	5	1	00	1	00	1	25	5	00	2	50					10	75
		400	400			16		16		20		80		40					1	72
		1,100	1,100	5		44		44		55	2	20	1	10					4	73
		100	100			04		04		05		20		10	1	00			1	42

shall be the duty of the holder of any mortgage, deed of trust, contract or other obligation, to file with the supervisor, or other assessing officer of the township or assessing district in which the land or real property affected thereby is situated, before the tenth day of April of each year, a written statement under oath of all his estate situated in such township or assessing district, liable to assessment and taxation under the provisions of this act, otherwise a written statement of the mortgagee's interest in any such real estate may be filed with the supervisor by the mortgagor or owner of the fee."

The blanks furnished by the Auditor General's office for the purpose of making statements of taxable property, under sections 12 and 13, properly filled out, furnish ample data on which to base a proper assessment of the interest of the holder of the mortgage.

These statements cannot control the action of the assessor as to the value of the property; they are only to be used as assistance in arriving at the value. Section 15 provides "In determining the property to be assessed and in estimating such values he (the assessing officer) shall not be bound to follow the statements of any person but shall exercise his best judgment."

When a mortgage is assessed to the owner, the State has a right to collect the taxes out of his personal property if he neglect or refuse to pay the tax.

Hence, the assessing officer should, in every case, assess the mortgage to the holder of the mortgage, notwithstanding, there may be an agreement between the parties that the mortgagor shall be liable to pay the tax.

The liability of the mortgagee to pay the taxes to the State, and the rights of the State to collect it out of his personal property, if he neglect to pay, has nothing whatever to do with any contract relations between the mortgagor and mortgagee, and the assessing officer has no right to release the mortgagee from his obligation to the State, by assessing the mortgage to the mortgagor.

The law applies to all mortgages whether given before or since the new tax law took effect and whether held by resident or non-resident persons or corporations.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Agreement between the mortgagor and the mortgagee—Statement of taxpayer—Total valuation of mortgage and fee—Assessment of non-resident mortgages.

A mortgage on land must in all cases be assessed to the owner of the mortgage, and an agreement in the mortgage on the part of the mortgagor to pay the tax does not change the rule.

If the mortgage is larger than the value of the land, the same principles would apply as in any other case.

The mortgage should be assessed at its cash value, which can never exceed the value of the land.

The fact that the statement required by section 12 was not obtained, would not necessarily vitiate the tax, but it would be safer in all cases to require it.

Non-resident mortgages should be assessed the same as resident mortgages.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 13, 1892.

T. C. QUINN, ESQ., *Prosecuting Attorney, Caro, Mich.:*

DEAR SIR—Your favor received and contents noted.

In reply to your first question:

Where there is a mortgage on the land with an agreement therein on the part of the mortgagor to pay the tax, the mortgage interest should be assessed to the mortgagee.

When a mortgage is assessed to the owner of the mortgage, the State has a right to collect the taxes out of his personal property if he neglect or refuse to pay the tax, if any personal property can be found to satisfy the tax, hence, the assessing officer should, in every case, assess the mortgage to the holder of the mortgage, nothwithstanding there may be an agreement between the parties that the mortgagor shall be liable to pay the tax.

The liability of the mortgagee to pay the taxes to the State, and the rights of the State to collect it out of his personal property, if he neglect to pay, has nothing whatever to do with any contract relations between the mortgagor and mortgagee, and the assessing officer has no right to release the mortgagee from his obligation to the State, by assessing the mortgage to the mortgagor.

2d. If the mortgage is larger than the value of the land, the same principles would apply as in any other case.

The mortgage could only be assessed at its cash value which could not exceed the value of the land, less the use of the land for the time that it would take to foreclose, and the expenses of foreclosure. And the value of the interest of the fee in such a case would generally be the value of the use of the premises for the same time.

Hence, in all such cases, there would be some value in the fee, and, as above stated, the mortgagee's interest would be less than the present value of the land. The value of both in all cases would just equal the value of the land.

3d. To your third question, concerning the requiring of a statement, under section 12.

The fact that the statement is not obtained, I think, would not vitiate the tax, unless it was shown, that, by reason of the neglect, the person who attacked the tax on that ground was injured. The whole theory of the tax law is, that no person shall complain of any omission or irregularity, unless he can show that such omission or irregularity injured him.

Yet it would be far safer, in all cases, to require these statements, as outside parties, or parties concerning whose property the statement is not made, may have an interest therein. It is made the duty of the supervisor, in every case, to take such statements, and the only safe way is to follow the law.

4th. In reply to your fourth interrogatory, concerning the manner of assessing non-resident mortgages.

They should be assessed the same as resident mortgages, placing the name of the owner of the mortgage on the roll. If the assessor cannot obtain this from the mortgagor, and it is not furnished by the mortgagee, he may obtain it from the Register of Deeds. It is his duty, under the law, to assess

the property, and he would be justified in using all reasonable means to obtain the data from which to make the assessment.

Respectfully,
A. A. ELLIS,
Attorney General.

Election law—Oath of inspector of election—Supervisor, clerk and justice of the peace not obliged to take.

Under sections two and three of Act No. 190 of the Public Acts of 1891, the constitutional oath required does not refer to the members of the board, but only to clerks of the board and those persons who are appointed as members of the board, and where the persons appointed are not officers who have taken the constitutional oath of office.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 14, 1892.

G. W. ALLEN, Esq., *East Jordan, Mich.:*

DEAR SIR—Your favor asking whether the supervisor, clerk, and justices of the peace, before acting as a board of inspectors of election, should take the oath provided in section 3 of Act No. 190 of the Public Acts of 1891, is at hand and considered.

You will notice that section 2 provides for the appointment of an elector or electors, as inspectors of election, when there are not a sufficient number present to constitute the board; and it is to such members of the board probably that section 3 refers, because the oath required is only the constitutional oath of office, and that oath has been already taken by the supervisor, township clerk, and justices of the peace, and it would make it no stronger to repeat the same thing.

I am therefore of the opinion that the intention was to apply the provisions of section 3 relative to the constitutional oath only to the clerks and to those persons who were appointed as members of the board, and where the persons appointed are not officers who have taken the constitutional oath.

Respectfully,
A. A. ELLIS,
Attorney General.

Classification of justices—Expiration of term of office—Statute construed.

Where, in the organization of a new township, four justices of the peace are to be elected, and are to be classified as to their terms of office as provided in sections 721 and 722 of Howell's Statutes, the justice of the peace who holds office for one year, holds until a year from the first day of July next after the election.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 15, 1892.

JAMES CHATFIELD, ESQ., *Kitchie, Mich.*

DEAR SIR—Your favor stating that a new township was formed in April 1890, in the county of Houghton, and at the first election held in April of

the same year, there were elected four justices of the peace, and that subsequently they were classified as to their terms of office as provided by sections 721 and 722 of Howell's Statutes, and asking my opinion as to the time when the office of the first justice of the peace would expire, is received and considered.

You will observe by reading section 721 that, while it provides that a notice shall be given within six days after election, and that the notice shall be served at least six and not more than twelve days previous to the time appointed for such meeting, there is nothing in the section that limits the supervisor as to the length of that notice. For instance, six days after election he might give notice that on the first day of August he would meet them at the town hall to determine by lot the class of such justices, and if the notice was served not less than six nor more than twelve days before the first day of August, that would be a compliance with the law.

And then, under the language of the next section, the next fourth of July, or one year from the fourth of July after the election, would be the time that the first justice of the peace would go out of office.

Section 683 of Howell's Statutes provides that when the justices are classified they shall hold their offices for one, two, three and four years.

If we construe section 722 on the theory that the notice is to be given forthwith, and one justice is to go out of office on the fourth of July next after election, it will be in plain conflict with section 683 which provides that the justice's term shall expire in one year; while under the other holding it will be in about sixty days.

It will be further observed that if a justice goes out of office on the fourth of July next after election there will be a vacancy in that office until the next election, and then one justice must be elected for three years and the second one for four years. There can be no sense in making a vacancy in one office from the fourth of July after election until the next spring election.

If we do not call it a vacancy to be filled, there would be two justices to be elected for the full term to commence on the fourth of the next July after the second election, and we would have no classification whatever of the justices. In either way it would not work out what is designed by the law, for it must be borne in mind that the only object of this classification is that the justices shall be so classified that only one shall be elected each spring; and that if each man fills out his term of office there would be no vacancy whatever.

The only way that this can be done will be to so construe the law that sections 683, 721 and 722 shall be consistent, the one with the other, and on the theory that a notice given any time during the year after the first election is within the meaning of section 721, and that the first officer should go out of office one year from the fourth day of July next after the first election.

The general rule is that a statute should be so construed that the intention of the Legislature will be expressed. The intention of the Legislature, if it can be ascertained, should govern in all cases although the construction may do violence to the plain language of the statute.

It is said that a construction is not within the statute if it does not express the intention of the Legislature, although it may be within the letter or language of the statute, and that a construction that is within the meaning of the Legislature is within the statute although it may be contrary to the letter of the statute.

Keeping in view the idea that the Legislature desired to so classify the justices that one should retire each year, and that only one should be elected at each succeeding election, I am of the opinion that the office of the first justice, under the statute, should be considered as expiring one year from the fourth day of July following the first fourth of July after election.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Exemptions—Real estate mortgages held by colleges not exempt.

Under section 3 of Act 200 of the Public Acts of 1891, providing that "real estate occupied by scientific institutions for the purposes for which they were incorporated shall be exempt from taxation," real estate mortgages owned by the Albion College are not "real estate occupied by such institutions" and are not exempt from taxation.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 18, 1892.

HON. DANIEL STRIKER, *Chairman of the Endowment Fund Committee, Hastings, Mich.:*

DEAR SIR—Your favor asking whether real estate mortgages held by the "Albion College Endowment Fund Committee," are assessable under Act No. 200 of the Public Acts of 1891, is received and considered.

It is provided by our present tax law that "any real estate mortgage, deed of trust, contract or other obligation, by which a debt is secured, where land within this State is pledged for the payment and discharge thereof shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the land so pledged."

Section three, so far as it applies to this matter, is as follows: "The following property shall be exempt from taxation."

"The personal property of all * * * scientific institutions incorporated under the laws of this State, and such real estate as shall be occupied by them for the purposes for which they were incorporated."

As real estate mortgages under the law are no longer personal property for the purposes of taxation, the only question that can arise is: are they exempt under the clause above quoted, which exempts "such real estate as shall be occupied by them for the purposes for which they were incorporated?"

It has been held under a former statute in this State, which is very similar to the one now under consideration, that property which was rented by the corporation, was not exempt from taxation.

The clause in the present tax law making this exemption is the same as in former tax laws of this State, and is substantially the same as that in the Massachusetts statutes, and was apparently taken from their statutes years ago; and it is held in Massachusetts (see Chapel of the Good Shepherd vs. Boston, 120 Mass. 213) that real estate itself must be actually occupied by the corporation, and, if it was rented and the rent applied to

the support of a school, that would not bring the real estate within the clause and entitle it to be exempt from taxation.

I come to the conclusion that mortgages held by scientific institutions are not real estate occupied by such institution. Interest in real estate represented by mortgages assessed to the college, but secured on lands actually occupied by others from which the corporation receives the interest, is analogous to the rent of real estate owned by corporations but occupied by others, and by analogy the rule should be the same.

I am, therefore, of the opinion that real estate mortgages held by the Albion College, or by other similar corporations, should be taxed the same as mortgages held by other corporations of this State.

Respectfully,

A. A. ELLIS,
Attorney General.

Election law—Mistake in spelling name on ballot—Minority candidate.

A vote cast for Adrian D. Cood cannot be counted for Adrian D. Cook.

If there is no man answering to the name receiving the greatest number of votes, that would not entitle the candidate receiving the next highest number of votes to the office. A minority candidate can never be entitled to the office.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 18, 1892.

EDWARD G. HOLBROOK, ESQ., *City Recorder, Hastings, Mich.:*

DEAR SIR—Your favor making a statement substantially as follows:

"'Adrian D. Cook' was nominated for alderman in the city of Hastings in the second ward against James E. Hogle, who was nominated on the other ticket. The ticket when printed and voted was printed 'Adrain D. Cood' on one ticket, and James E. Hogle on the other.

"There were eleven more ballots cast for 'Adrian D. Cood' than for James E. Hogle, and the board declared 'Adrian D. Cook' elected; that he qualified claiming to be elected" and asking my opinion "whether or not the votes were legally counted for 'Cook,' and if not who was elected?" is received and considered.

The law provides that sample copies of the ticket shall be on exhibition so that they can be viewed by the chairman and secretary of the respective parties, at least two clear secular days before election.

This provision is placed in the law for the purpose of allowing such officers to have any mistakes in the ticket corrected.

The ticket as prepared and voted does not contain the name of "Adrain D. Cook" and oral evidence is not admissible to explain the ballots or to contradict their contents.

Mistake in the spelling of the name, where the name as spelled will be pronounced the same either way, does not invalidate the ballot; but there is no rule of law by which the name of "Cood" can be counted for "Cook."

The question is fairly ruled by the case of People vs. McNeal, 63 Mich., 294, where it was held that a ballot cast for "Samuel Toley" could not be counted for "Samuel Tobey."

Under no theory could "Adrain D. Cook" be considered elected; but on the other hand, "Adrain D. Cood" was duly elected.

If there is no man by that name who is qualified to hold the office, that would not entitle James E. Hogle to the office of alderman, because as held by the Supreme Court of this State in the case of People vs. Molitor, 23 Mich., 341, no one is elected at a popular election, unless there are more ballots cast for him, than for any other person, whether there is or not, in fact, any such person in existence who can take the office. A minority candidate can never be allowed to maintain his title.

The board of inspectors should have certified that "Adrain D. Cood" was elected.

The charter of the city of Hastings, section five, provides that "aldermen shall be elected for two years and until their successors are elected and qualify," and inasmuch as there was no man by the name of "Adrain D. Cood" who possessed the necessary qualifications of an elector in the city of Hastings, who could qualify for the office of alderman, the result would have been as follows: The alderman elected two years ago, if he had never resigned or the officer appointed to fill the vacancy, would have held over.

If, on the other hand, the alderman who held the office previously had resigned and the office was vacant at the time of election, it would have been the duty of the council, under section seven of your charter, to have filled the vacancy by appointment.

There being no statement in your letter concerning the facts in relation to these last matters, to which I refer, I have been compelled to state my opinion of the law, and allow you to apply the same to the facts.

Respectfully,

A. A. ELLIS,
Attorney General.

Liquor law—Who may act as sureties on liquor bonds.

A highway commissioner cannot act as surety on a liquor bond; neither can a person who is not worth in real estate, over and above exemptions, $3,000.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 27, 1892.

CHAS. F. SANCRAINTE, ESQ., *Lake Ann, Mich.:*

DEAR SIR—Your favor of the 18th instant received.

Section 8 of Act 313 of the Laws of 1887 expressly prohibits any person holding an elective or appointive office, except notaries public, from being a surety on a liquor bond.

A highway commissioner would come within the prohibition.

See Gust vs. President and Trustees of White Cloud.

No opinion was filed in this case, but the writ was denied on the ground that the provision of the statute forbidding public officers to go upon a liquor bond was valid.

In the case of People vs. Brown, 85 Mich., 121, the Supreme Court said:

"That aside from the objectionable features pointed out in the case of Robison vs. Miner, 68 Mich., 549, the section above referred to is constitutional."

In the case of Robison vs. Miner, no objection whatever was made to this section on the ground that it prohibited officers from going on liquor bonds; hence, it would seem to me that, as the matter now stands, it is the duty of the officers to enforce the law.

The sureties on a liquor bond would have to justify to own, in real estate, an amount of at least three thousand dollars, in the county.

Respectfully,
A. A. ELLIS,
Attorney General.

Liquor law—Residence of sureties—Liabilities of sureties on liquor bond—Estoppel.

Sureties on a liquor bond must reside in the village, township or city where the business is carried on; but if they do not so reside, and the bond is made in the proper form and accepted by the approving board, they are estopped from denying their liability on said bond.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 27, 1892.

R. L. ROOT, ESQ., *Plymouth, Mich.:*

DEAR SIR—Your favor containing liquor bond is received. The bond is all right in form. Of course, it is the duty of the council to fix the amount of the bond anywhere between three and six thousand dollars, and you will notice the form of the bond is drawn for wholesale or retail dealers. That would be all right if a man was going into wholesale business, but in retail business, the word "wholesale" should be stricken out, as indicated on the bond.

The law provides that parties who become sureties on a liquor bond shall reside in the village, township or city where the business is carried on. If the business is carried on in the city, they should reside in the city; if in the township, in the township, and if in the village, they should reside in the village.

But if they do not reside in the township, village or city where the business is carried on, and the bond is made in the proper form, they cannot be discharged from their liability if the board should vote to accept such a bond. What I mean by that is this: That if a bond is made out in the proper form and presented to the council, in which it is alleged that the parties reside in the township, village or city where the business is to be carried on, neither the principal nor the sureties would afterwards be permitted to say in court that they did not reside in the city, village or township. They would be estopped from making any such claim, and the bond would be good, no matter where the sureties resided. And, as above stated, the law does not contemplate that the sureties shall reside outside of the municipality where the business is carried on.

Respectfully
A. A. ELLIS,
Attorney General.

Taxation of several parcels of land covered by one mortgage.

Where several descriptions of land are covered by one mortgage, the mortgage should be assessed proportionately.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 27, 1892.

J. A. UNDERWOOD, ESQ., *Supervisor, Burlington, Mich.:*

DEAR SIR—Your favor stating that three descriptions of land, as follows:
"S W $\frac{1}{4}$ of Sec. 26, Township 3, R 7, 160 A, value $2,800,
"S W $\frac{1}{4}$ of N W $\frac{1}{4}$ Sec. 26, Township 3, R 7, 40 A, value $1,000,
"S end E $\frac{1}{2}$ of N E $\frac{1}{4}$ Sec. 27, R 7, 36 A, value $900,"
are mortgaged for $3,000, the mortgage covering all of the pieces, and asking how to assess under such circumstances, is received.

I take it that the values as above given are the total values of the land, embracing both the interest of the owner of the fee and the owner of the mortgage.

Everything being equal, the usual way to assess in such cases is to assess proportionately and that is what the law contemplates.

In such case, you would add together the values, making $4,700; and then say "as the value of each piece is to $4,700, so is that portion of the mortgage which should be assessed upon each piece, to the total value of the mortgage." That is, you would assess to the owner of the mortgage $\frac{2}{47}$ of $3,000 against the first description; $\frac{1}{47}$ against the second description; and $\frac{9}{47}$ against the third description, and the amount of the mortgage that is assessed to each description would be deducted from the value of that description. For instance in the second description, the total value of the land is $1,000, $\frac{1}{47}$ of $3,000 is $638, hence deduct $638 from $1,000, would leave $362 to be assessed to the owner of the fee, and $638 would be assessed to the owner of the mortgage.

You will see in this way that when the mortgage covers various descriptions of land, if it be assessed proportionately among all of the lands, it makes no difference who owns the title of the fee to the various descriptions, or whether they are severally owned by one or many.

This idea of assessment is not only equitably correct, but it is within the intention of the Legislature, as expressed in the seventeenth section of the act. You will notice in the latter part of that section that it is provided that where a mortgage is to cover separate parcels of land, then the parties shall agree upon the proportionate amount that shall be assessed against each parcel.

Even if there was an agreement, that would not bind the assessor but it could only be used as some light to guide him in making his assessment. In case he has no such information, he must make his division, basing his judgment upon the relative values of the separate pieces of land, and then making the equitable division above suggested.

Respectfully,
A. A. ELLIS,
Attorney General.

When Auditor General authorized to issue warrant.

The allowance of a bill by the Board of State Auditors, when such bill is of a class of bills which the constitution expressly authorizes said board to audit, is a sufficient warrant for the Auditor General to draw his warrant for the same.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 27, 1892.

HON. GEO. W. STONE, *Auditor General, Lansing, Mich.:*

DEAR SIR—Your communication referring to this office six bills in favor of Daniel E. Soper, late Secretary of State, and asking my opinion as to whether you should pay the same, is received and considered.

The accompanying bills have all been allowed by the Board of State Auditors, and they are of the class of claims which the constitution expressly refers to said board and authorizes them to pass upon.

I am of the opinion that the Board of State Auditors had a legal right to audit and allow these claims and they, having done so their action is sufficient warrant for you to pay the same.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Place of sale for taxes.

Tax sales should be held at the place named in the notice, as required in section 54 of the tax law of 1889, and section 62 of the tax law of 1891.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 28, 1892.

JOHN W. WEST, ESQ., *County Treasurer, Caro, Mich.:*

DEAR SIR—Your favor asking whether it would be safe to call your sale at your office, and then adjourn to the court room, is received.

Section 54 of the tax law of 1889, under which your sale is held this year, expressly provides that the place of sale shall be mentioned in the notice.

Section 62 of the new tax law is not quite so specific, but it seems to me that, under the circumstances, it would be far safer to conduct the sale at the place named, than to hold it at some other place.

It is never possible to tell what questions persons may raise relative to those matters, and everything being equal, it is much safer to avoid all technicalities in tax matters.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Logs banked—Where assessed.

Logs piled or left in any yard, etc., are not deemed in transit, but should be assessed to the owner where the same are situated.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 28, 1892.

J. PETERSON, ESQ., *Grayling, Mich.:*

DEAR SIR—Your favor asking "Are logs which are banked on the railroad on the second Monday in April, deemed in transit, or are they assessable in the town where banked?" is received and considered.

Your question is answered by the last paragraph of the fourth subdivision of section 11 of the tax law of 1891 which provides that logs that may be piled or left in any yard, railroad reserve, or in any shed, shall not be deemed in transit, but shall be assessed to the owner thereof in the township or ward where the same may be situated, at the time provided by law for taking such assessment.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation of mortgages on churches.

Mortgages held by non-residents upon church property are assessable to the owner of the mortgage. The fee interest should be opposite the name of the church, and should be marked "exempt." The name of the non-resident mortgagee can be obtained by going to the Register of Deeds.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 28, 1892.

H. N. BEACH, ESQ., *Howell, Mich.:*

DEAR SIR—Your favor stating "We have a church here worth $10,000, and a mortgage on it for $4,000," and asking how you could assess it, inasmuch as it belongs to a non-resident party? is received and considered.

The church property should be placed upon the roll the same as any other property, giving the description of it. The name of the church, of course, would be placed on the roll as the owner of the fee, and the interest of the owner of the fee should be marked "exempt," and the interest of the mortgagee should be assessed to the person who owns the mortgage. You can get the name of the mortgagee by going to the Register of Deeds.

The fact that the interest in the fee is exempt, does not exempt the holder of the mortgage from paying his taxes.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Deduction of debts from credits.

A person has a right to have his debts deducted from his credits, provided they are not secured by real estate mortgages; but such right does not apply to personal property chattels.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, April 28, 1892.

THOS. HEWITT, ESQ., *Schoolcraft, Mich.:*

DEAR SIR—You favor stating "I have a stock of merchandise worth $2,500; book accounts, $500; owe for merchandise, $1,000; borrowed money on note, $1,000," and asking "Should I be assessed $3,000, or can my indebtedness be deducted from stock?" is received and considered.

You would be entitled to a deduction of $500 by reason of your credits, but there can be no deduction whatever from the merchandise worth $2,500.

A person under the law has a right to have his debts deducted from such of his credits as are, under the law personal property. I mean by that, that if his credits are not secured by real estate mortgages, he is entitled to the deduction, but such right does not apply to personal property chattels.

Respectfully,
A. A. ELLIS,
Attorney General.

Citizenship—Naturalization—Declaration of intention made in other states.

The qualification of an alien to vote in Michigan is controlled by the constitution and laws of Michigan.

An alien must reside in this State two years and six months previous to an election, and must possess the other qualifications as to age, etc., before he will be entitled to vote under article 7, section 1 of the constitution. And the fact that he had declared his intention to become a citizen of the United States before he moved into this State does not permit him to vote before he has lived here two years and six months.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 2, 1892.

THOS. KISSANE, ESQ., *Attorney, etc., Ironwood, Mich.:*

DEAR SIR—Your favor asking for my opinion, relative to what construction should be placed upon article 7, section 1 of the constitution, as applied to aliens who have declared their intention to become citizens in some other state of the Union, and have moved into this State before election, and particularly as to the length of time such persons must reside here in order to be entitled to vote, is received and considered.

The whole subject of the regulation of elections, including the prescription of qualifications for suffrage, so far as it applies to aliens, is left by the national constitution to the several states.

Aliens are generally excluded from voting, though in some of the states

they are allowed to vote after residence of a specified period, provided they have declared their intention to become citizens in the manner prescribed by law.

With the above rule in view, it will be readily seen that the laws of Pennsylvania, Wisconsin, or any other state, cannot limit or control the provisions of the constitution of the State of Michigan as to the qualifications of alien voters.

Article seven, section 1, expressly provides that:

"In all elections, every male citizen, every male inhabitant residing in the State * * * who has resided in the State two years and six months, and declared his intentions as aforesaid * * * shall be an elector and entitled to vote; but no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he shall be above the age of twenty-one years, and has resided in this State three months, and in the township or ward in which he offers to vote, ten days next preceding such election."

It will be observed that the first part of section one relative to the qualifications of aliens to vote, is positive in its requirements, and provides that such persons shall reside "in the State two years and six months."

The latter part of the section only provides for some further limitations which are of a negative character, and which apply to citizens as well as aliens.

A residence of two years and six months, and declaration of intention to become a citizen six months before election, and being a male inhabitant of twenty-one years of age, qualifies an alien to vote.

If he does not possess all of these qualifications, in my opinion, he would not be an elector within the provisions of article 7, section 1 of the constitution.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation—Locus of assessment.

Animals kept a part of the year in a ward other than where the owner resides do not come within the exceptions of the second subdivision of section 11 of the tax law, but should be assessed as provided in section 10 of Act No. 200 of the Public Acts of 1891.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 5, 1892.

H. A. SANFORD, ESQ., *Prosecuting Attorney, Mt. Pleasant, Mich.:*

DEAR SIR—Your favor stating that "John Smith lives in the third ward, that he rented a barn in November, 1891, in the second ward, where his horses remained until after the second Monday in April, 1892, and he then removed his horses to a barn in the third ward," and asking "in which ward the horses should be assessed?" is received and considered.

In reply I would say: In the third ward.

The animals are not kept throughout the year in the second ward, and

do not come within the exceptions of the second subdivision of section 11. They should be assessed as provided in section 10 of act No. 200 of the Public Acts of 1891.

Respectfully,
A. A. ELLIS,
Attorney General.

Township meetings—Raising of taxes—Vote for—What constitutes a majority.

Section 672 of Howell's Statutes only requires a majority of all the votes cast on the question of taxation. Votes cast on other questions are not considered.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing May 6, 1892.

JAS. S. HITCHCOCK, ESQ., *Monroe, Mich.:*

DEAR SIR—Your favor stating that at the last spring election the question of raising $700 for the erection of a town hall was voted upon; that there were 330 votes cast at the township meeting for township officers; that 150 voted "Yes," and 120, "No," on the question of raising the said tax, and asking whether, under section 672 of Howell's Statutes, the measure carried? is received.

It is my opinion that the statute does not require a majority of all the votes cast at the election on some other question, or on the election of officers. I think the statute only contemplates that the question concerning the raising of money shall receive a majority of all the votes cast on such question.

Gillespie vs. Palmer, 20 Wis., 572.
Sanford vs. Prentice, 28 Wis., 358.

Respectfully,
A. A. ELLIS,
Attorney General.

Vacancies—Failure to file oath of office.

Under the charter of North Muskegon, a justice of the peace should file his oath of office and bond with the County Clerk. The office of justice of the peace of North Muskegon is not rendered vacant by the failure of the justice to *file his oath* of office within the time prescribed by law, he having, in fact, taken the required oath and given the statutory bond.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 13, 1892.

In re the office of Justice of the Peace for the City of North Muskegon.

At the charter election of said city, held on the 4th day of April, 1892, George W. Howell, of said city, was duly elected to fill the office of justice of the peace for the term of two years, to fill a vacancy then existing. Said Howell was duly notified by the clerk of said city of his election.

Section 11, chapter 3, of the charter of said city provides: "Each of said officers so elected and notified shall within ten days after such notice take and subscribe the constitutional oath of office before any person authorized to administer oaths, and deliver the same to the recorder, who shall file it in his office."

Section 6, chapter 5, of said city charter provides: "The justices of the peace of said city shall qualify in the same manner and give like security as required by law of the justices of the peace in townships. * * * When elected to fill vacancies they shall qualify within eighteen days after notice of election. General laws are made applicable, except as otherwise provided."

The said Howell, in pursuance of the general statutes of Michigan, on the 16th day of April, filed with the clerk of the county of Muskegon his official oath and bond, theretofore duly executed, and approved by the officer acting as supervisor of said city of North Muskegon, but the said Howell did not file with the clerk of the city of North Muskegon any official oath.

The question submitted: Is said Howell duly qualified as a justice of the peace, or does a vacancy exist in said office?

In addition to the section above quoted, section one, chapter 4, of the charter of the city of North Muskegon expressly provides under what conditions an office shall become vacant, and so much of the section as applies to the question here presented, reads as follows:

"Every office in said city shall become vacant on the happening of either of the following events, viz.: * * * his refusal or neglect to take his oath of office or to give his official bond in the manner or within the time required by law."

A marked difference will be found between this section and subdivision 7 of section 649 of Howell's Statutes, which prescribes the conditions on which a vacancy in a township office shall occur.

It reads as follows:

"His refusal or neglect to take his oath of office, or to give or renew any official bond, *or to deposit such oath or bond in the manner and within the time prescribed by law.*"

In the section quoted from the charter of North Muskegon, above given, the clause, "or to deposit such oath or bond in the manner and within the time prescribed by law," is omitted, and the sole condition made is that "if he fail to take his oath of office or give his official bond in the manner or within the time required by law."

It will appear from the statement of facts above given that said Howell actually did take and subscribe the constitutional oath of office before a person authorized to administer oaths, and gave his bond within the time prescribed by law.

Under the charter of North Muskegon, when it is shown that the party has actually taken his oath of office and given his bond, it could hardly be said that his office had become vacant, even if his oath of office or bond was not filed. The filing of the oath or bond is not made a condition in the charter.

But it appears to me that inasmuch as a justice of the peace is a public officer of the county, and the people at large are interested in him and his office and the bond that he must file, section 6 of chapter 5 of the charter was intended to make a difference in the manner in which justices of the peace should qualify, and that it was intended that they should comply

with section 768, Howell's Statutes. In my opinion when George W. Howell executed and filed his official oath and bond with the County Clerk, as required by law, he was duly and legally qualified as justice of the peace, and that, therefore, without any reference to the construction that should be placed upon section 1 of chapter 4 of the charter, I am of the opinion that no vacancy exists in said office.

Respectfully,
A. A. ELLIS,
Attorney General.

Game law--Rights of owners of private waters—Erection of dams and fish shutes.

A private stream of water, owned by one individual, is not subject to the laws of the State relative to fishing and the erection of fish shutes.
A person owning such stream may erect a dam across it, without providing fish shutes. He also has the right to lease the fishing privileges.
He could maintain action of trespass against persons fishing in such water against his will.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 13, 1892.

W. H. MURPHY, ESQ., *Deputy Game Warden, Dowagiac, Mich.:*

DEAR SIR—Your favor inclosing map, which I herewith return, is received and considered.

The map shows a small creek, having its source on the lands of the M. C. R. R., (which road crosses the farm of Mr. Broadhurst) flowing across the farm of Mr. Broadhurst and into a small lake called Cook's lake, thence into Dowagiac creek, said creek emptying into St. Joe river. Mr. Broadhurst, as appears by the map, has erected a dam across this creek at a point on his farm and above the said Cook's lake, making a small pond on his farm.

You state that:

"The stream here shown was stocked by the State with brook trout and Mr. Broadhurst claims the exclusive right to control both the stream and the fish therein. He has leased the stream and the land contiguous to a fishing company, has put in a dam as indicated and failed to provide a fish way around the dam. He will not allow any one to fish on the land and is trying to bring suit for trespass against some parties who have fished there."

The questions submitted are:

1. "Has he a right to maintain a dam across the stream which will prevent fish from migrating up and down?

2. "Has he a right to lease the fishing privileges to any company for their exclusive benefit?

3. "Can he prevent the public from fishing on the land along the stream?

4. "Can he bring suit for trespass except for actual damage done?"

1. The section of the statute bearing on the first question reads as follows:

"It shall not be lawful for any person or persons to place a weir dam, fish weir, weir net or other device across any race, stream, lake or river of this State, in such a manner as to obstruct the free passage of fish up and down the same."

Sec. 13, Act No. 111 of the Public Acts of 1889.

The question will be, does this statute include in its prohibition such a case as above stated?

The answer to this will depend wholly upon whether this is a public passage way for fish, and whether they are accustomed to pass through it to other waters.

It virtually has its source on the lands of Mr. Broadhurst. It does not connect with any body of water above his land, nor does it pass upon the lands of any other person until it leaves the lands of said Broadhurst. The erection of this dam cannot be said to cause any injury to the public by reason of its preventing fish ascending the stream, as the public has no right in the water above the dam. Neither do I think it can be said to be any violation of the law if it should prevent the fish from going down the stream.

As was said by Judge Campbell, in Sterling vs. Jackson, 69 Mich., 509, "In streams purely private, the enjoyment of rights in the bed of the stream is very important, as dams and other permanent erections may be necessary to get the value of their use, and it may sometimes be desirable to fence or close portions of them for shutting out or shutting in what needs such management.

"Every benefit which can be drawn from the use of private waters belongs to the private owners."

In my opinion Mr. Broadhurst cannot be successfully prosecuted for the erection of a dam across a stream of water which is so entirely private as the one under consideration.

2. The owner of a private stream or pond of water has an absolute right to lease the fishing privileges to any company for their exclusive benefit.

"No one but the owners of such streams or bodies of water have any right to go upon or to use them for any purpose whatever, without license from the owner. It is as much a wrong against the owner to touch his stream as to touch his land, without his consent."

Sterling vs. Jackson, supra.

A man would have as much right to lease a private stream or pond which he owned, as he would to lease a part of his land. The State can exercise no control over it.

3. He would have as much right to prevent persons from fishing on the land along the stream as he would have to prevent persons from entering on any other part of his premises.

Section 10 of Act 111 of the Laws of 1889 distinctly recognizes the right of owners of private waters to prevent the taking of fish in such waters.

4. The question as to whether the owner of the lands could recover more than actual damages in a suit for trespass is one governed so largely by circumstances that I cannot venture to express any opinion on the matter.

Respectfully,

A. A. ELLIS,
Attorney General.

Special elections for bonding a township—Who entitled to vote at such elections.

Under a law providing "A two-thirds majority of the electors of said township, voting at an election to be called, etc.," should be necessary to carry the election, all persons who would be entitled to vote at any election in the township would be embraced within this section, and would be entitled to vote on the question of bonding.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 13, 1892.

GEO. D. RICHARDS, ESQ., *Wolverine, Mich.*

DEAR SIR—Your favor of May 12th stating that a special election will be held in the township of Nunda, Cheboygan County, under local Act No. 370 of the Local Acts for 1891, for the purpose of bonding the township for $5000, and asking as to whether all are voters, or only taxpayers will have a right to vote upon that question, is received and considered.

The act is very plain and there ought to be no misunderstanding about its provisions.

Section 1 provides that "a two-thirds majority of the electors of said township voting at an election to be called, etc." and section 2 provides "if such loans shall be authorized by a two-thirds majority of such electors" etc.

The electors referred to in this act are the qualified electors of the township, and the word "electors" must be understood in the sense in which it is used in the constitution of the State; and it, therefore, embraces all persons who would be entitled to vote at any election held in said township.

All male persons who are twenty-one years of age and are citizens of the United States, and all male persons twenty-one years of age who have resided in this State two years and six months prior to the election and have declared their intention to become citizens of the United States six months before such election, who have resided in the State three months and in the township ten days before such election, and are duly registered, are entitled to vote.

Respectfully,
A. A. ELLIS,
Attorney General.

School law—Power of district board to suspend pupil for immorality.

A district board has full power to expel a pupil who is guilty of gross immorality, although such immoral practices be carried on outside of the school-room and out of school hours. The fact that she obeys the rules in school can make no difference.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 14, 1892.

HON. FERRIS S. FITCH, *Superintendent of Public Instruction, Lansing, Mich.:*

DEAR SIR—Your favor stating "There is a young unmarried lady attending the village school in one of the villages of this State; she is a member of the class that will graduate in June, 1892. Some time during

the school year of 1890 and 1891, she was found to be *enceinte*, and by reason of shame, she was forced to leave the school, and after a time was delivered of an illegitimate child; after an elapse of several months she was allowed to attend school again by the board, upon the promise of reformation and proper conduct. It now becomes evident that she has broken her promise in that regard and is again prostituting herself while out of school and away from the school grounds. When attending school she apparently obeys the rules and conducts herself with proper decorum.

"She and her mother insist that she has a right to attend school and graduate with the class," and asking "Has the board a legal right to either suspend or expel this young lady, or are they obliged, under the circumstances, to allow her to go on and graduate?" is received and considered.

The public schools of the State are expressly mentioned and provided for by the constitution.

The object of such schools is to instruct the youth of the State in the various elementary sciences and, at the same time, to teach them honesty, sobriety, morality, chastity, and the various other virtues that will render them useful members of our commonwealth. If, while we are inculcating in the minds of the young some general understanding of the sciences, through the free school system, there exists no power in our laws to protect the innocence of youth from the contaminating influence and evil example of immoral associates, there is much danger that, while they may gain a little that will make them wiser, they will learn enough of evil to render them wholly unfit to become respected and useful members of society.

The case stated by you, it seems to me, is an extreme one. The daily association with such a classmate must, necessarily, have a very dangerous influence with all those who are, under the rules of the school, compelled to thus associate. Such cases are exceptional, and the power to deal with them must, necessarily, be given in broad terms, as no one could foresee and especially provide for particular instances of the class of offences mentioned. Much discretion, in the management of the school, must be vested somewhere, and the statutes vest that discretion and power to act, in such cases, in the district board as a body.

Section 44 of the General School Laws provides "The district board shall have general care of the school, and shall make and enforce suitable rules and regulations for its government and management."

The law governing graded schools provides among other things, that "the board shall perform such other duties as are required of district boards in other school districts."

The law is sufficiently comprehensive to give the district board full and complete authority to expel a pupil who is guilty of the conduct charged in your statement of facts, and as, by the suffrage of the electors, they have, under the law, been charged with the management of the school, it is a duty the board owes to every virtuous scholar in the school to see that they are not compelled to associate with one who has, and does, prostitute herself as stated.

The fact that she may obey the rules in school can make no difference. Her evil, contaminating influence is there just the same. Suppose she came there with a contagious disease like the measles, or the whooping cough, would not every one say at once that the board had authority to expel or suspend her? She has, under your statement of facts, a worse disease than either. She is a moral leper, and the disease that she has is more contagious and more dangerous in its influence upon the school than

an aggravated case of small-pox. It is within the power, and it is the duty of the board to make an investigation, and if they find the matter as charged, to expel this pupil from the school.

They are not obliged to, neither have they a legal right, if the facts are as stated by you, to allow her to either graduate or continue a member of the school.

While happily such cases have been very rare, still I find that there are cases where the courts have been called upon to define the authority of the school board, in cases very similar to the one under consideration.

In the case of Sherman vs. Inhabitants of Charlestown, (see 8 Cush., 160) Charlotte A. Sherman was expelled from school by the school board for immoral conduct with one Nicholson. The transaction took place away from the school, and out of school hours, and it was urged in an action against the board for expelling the young lady that, inasmuch as it was not in school nor within school hours, the board had no right to expel her from school. The Court, in discussing the matter, used this language:

"But it is argued, that though good discipline may be maintained within the school, yet the master and the committee have no right to look beyond the walls of the school, to take notice of the conduct of its pupils. We cannot perceive the force of this distinction, pressed to the extent to which the arguments attempt to carry it. Truancy is a fault, committed wholly beyond the precincts of the school; yet no example is more contaminating, no malconduct more subversive of discipline. May not an incorrigible truant be expelled, not as a punishment merely, but as a protection to others from injurious example and influence. Children of both sexes, and of various ages, capacities and susceptibilities, must be thrown together on their way to and from school, at their amusement out of school hours, under such circumstances as to exert a powerful influence on each other. * * *

"Supposing, then, that the school committee have power, upon a proper occasion, to exclude a pupil, we can have no doubt that open, gross immorality in a female, manifested by licentious propensities, language, manners and habits, amounting even to actual prostitution, although not manifested in the school, are a sufficient ground on which to prohibit her attending the public school."

Respectfully,
A. A. ELLIS,
Attorney General.

Liquor law—Word "removal" construed—Bonds.

The word in the clause in the eighth section of the liquor law, allowing the County Treasurer, in case of death, "removal," etc., of either of the sureties on a bond, is used in the sense of moving out of the township or county.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 16, 1892.

JOS. S. COURTNEY, ESQ., *County Treasurer, L'Anse, Mich.:*

DEAR SIR—Your favor asking for my opinion as to what the Legislature

meant, in section 8 of Act No. 313 of the Public Acts of 1887, by the word "removal" in the clause which allows the County Treasurer, in case of death, removal, etc., of either of the sureties on a bond, is received.

It is my opinion that they use the word "removal" there in the sense of moving out of the township or county.

When a man has given a bond for a given period, under certain conditions, I do not believe that it was the intention of the law to allow such person to avoid his liability by removing his name from the bond.

The clause was put in the bond with the idea that, if a man moved away, the people would not be as secure as they were before, because they could not get service upon him. In other words, the clause was put in the bond for the benefit of the public, and not for the benefit of the sureties.

Respectfully,
A. A. ELLIS,
Attorney General.

Transportation of convicts to the Detroit House of Correction—Liability of State for expense of.

The only persons for whom the State would be liable for transportation to the Detroit House of Correction, are male persons between the ages of sixteen and twenty-two years, who have been convicted of any State prison offense, excepting murder and treason, and females who have been convicted of any offense, excepting murder, which makes such females liable to imprisonment in the State prison, and persons convicted of a State prison offense for the first time, excepting rape, murder and treason.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 17, 1892.

HON. GEO. W. STONE, *Auditor General, Lansing, Mich.*

DEAR SIR—Your favor asking my opinion as to what class of claims should be audited by the Auditor General for conveying persons to the Detroit House of Correction, is received.

The only persons for whom the State would be liable for transportation to the Detroit House of Correction, are male persons between the ages of sixteen and twenty-two years, who have been convicted of any State prison offense, excepting murder and treason, and male persons, convicted for the first time of any offense, rape, murder and treason excepted, punishable by imprisonment in the State prison, and females who have been convicted of any offense, except murder, which would subject such females to confinement in the State Prison.

The transportation and expenses of conveying any person to the Detroit House of Correction, who has been convicted of any offense *not punishable by imprisonment in the State Prison,* and the transportation and expenses of conveying persons who are *over twenty-two years of age and who were convicted of a second or subsequent offense,* if received at the Detroit House of Correction, must be paid by the county where such person was convicted.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation of mortgages—Locus of assessment.

Mortgages on lands located outside of a village cannot be assessed as personal property for village taxes, unless the land is not in this State but in some other state where mortgages are not considered as personal property for the purposes of taxation.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 17, 1892.

F. M. STORMS, ESQ., *Village President, Plainwell, Mich.:*

DEAR SIR—Your favor asking if real estate mortgages can be assessed as personal property for village taxation, is received.

In reply I would say that:

If the mortgages are on real estate in the State of Michigan, or on real estate in any other state where mortgages are considered as real property for the purpose of taxation, they would have no right to assess them, as such mortgages should be assessed as an interest in the real estate in the township where the land is situated.

If, however, they are on lands outside of this State, in some state where mortgages are not considered a part of the real estate, then they would be assessed to the owner as personal property in the township or village where he resides.

Respectfully,
A. A. ELLIS,
Attorney General.

Citizenship—Persons born in the allegiance of the United States—Term "born in allegiance" defined.

A young man was born and always resided in this State. His mother was a native of Pennsylvania. His father was an unnaturalized Swede. *Held*, that such a person is a citizen of the United States and of the State of Michigan, and if twenty-one years of age, would be entitled to register and vote.

A person to be "born in allegiance of the United States" should not only be born on American soil, but on soil that was within the control of the United States at the time of his birth.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 17, 1892.

E. J. PECK, ESQ., *Northport, Mich.*

DEAR SIR—Your favor of May 14th, on behalf of the board of registration, stating that "At our last election the board of registration refused to register a young man, on the ground that he was not a citizen. Said young man was born, and has always resided in this State. His mother is a native of Pennsylvania. His father is an unnaturalized Swede," and asking, "Was the board justified in refusing to register him?" is received, and in reply I would say that:

The young man, under the circumstances as you state them, is a citizen of the United States and of the State of Michigan, and, if twenty-one years af age, is entitled to be registered and vote.

The first clause of article 14 of the amendment to the Federal Constitution provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The clause from the amendment to the constitution above quoted is only a statement of the common law that was in full force and effect before that amendment was passed.

Except in case of children of ambassadors, who are in theory born upon the soil of the sovereign whom the parent represents, a child born in the allegiance of the United States, is born its subject, without reference to the political *status* or condition of its parents. Birth and allegiance go together.

McKay vs. Campbell, 2 Sawyer, 122.
1 Black. Com. 366.
2 Kent's Com. 39, 42.
Ingles vs. The Sailor's Snug Harbor, 3 Pet, 120.
U. S. vs. Rhodes I Abb. U. S. Rep. 40.
Lynch vs. Clarke and cases there cited.
1 Sandf. Ch. 630.

What I mean by being born in allegiance to the United States, is that the party should not only be born on American soil, but on soil that was within the control and dominion of the United States at the time of the birth. That is to say, if England should by force ever take possession of a part of our territory, and a child of English parents should be born on that territory, during the time that Great Britain had control thereof, such child would not be born in allegiance to the United States, because, while it was born on the soil, it would not be born subject to the control of the United States.

All the authorities, which have held that persons born of foreign parents in the United States are not citizens of the United States, are based upon the idea that the parent is either an embassador, or that they were born on some portion of the territory of the United States over which some foreign power had control at the time of the birth.

But your case is concerning the *status* of a *young man*, and no *young man* has been born in Michigan within any time when any foreign power had control of any part of Michigan soil.

Hence, it necessarily follows from what I have above said, that the board of registration decided incorrectly, and that they were not justified in refusing to register the name of this young man, provided he was twenty-one years of age.

Respectfully,
A. A. ELLIS,
Attorney General.

Game law—Erection of dam across private streams—Rights of owners.

A person owning a private stream of water, not connected with any waters above him, but having its source on his premises, has a right to erect a dam on his premises across the same, if, in so doing, he does not deprive persons below him of the use and benefit of the waters of the stream, by cutting off or decreasing its supply.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 18, 1892.

HON. CHAS. S. HAMPTON, *State Game and Fish Warden, Petoskey, Mich.:*

DEAR SIR—Your favor with inclosures received.

The map inclosed is a diagram of Cedar creek. This creek has its source from springs located on the premises of the Emens Brick and Tile company. Further down the stream and below the company's land are two mill dams, which, I take it, are in use by the mill owners.

A letter of said company, addressed to you, states that they desire to erect a small dam across this creek, about twelve rods below these springs, the dam, of course, to be built upon their premises.

You request my opinion as to their right, under the law, to erect such a dam at the point indicated on the map.

The only statute which could deny them such a right, is section 13 of Act No. 111 of the Public Acts of 1889. That section reads as follows:

"It shall not be lawful for any person or persons to place a weir dam, fish weir, weir net or other device across any race, steram, lake or river of this State, in such a manner as to obstruct the free passage of fish up and down the same."

The determination of this question rests upon the conclusion as to whether such a stream comes within the provisions of the statute.

The object of the law was to prohibit persons stopping the free passage of fish along the streams of this State, in order to secure to persons along all points of the stream, an equal chance in the open season to take fish from the streams.

The same idea has been embraced in the law in regard to rivers for a number of years, wherein it is provided that in all dams across rivers, shutes or fish ladders shall be placed to facilitate the free passage of the fish.

The law was not intended to apply to cases where there were no persons further up the stream that had any interest in the public use of the water for propagating fish.

The waters of the stream described in your letter, as I understand it, issue from the lands of the Emens Brick and Tile company. The fact that a swamp is situated above these lands, which is dry five or six months of the year, but occasionally, in times of high water, flows into this creek, can have no weight in the consideration of this matter. If the stream rises on the lands of the company, so far as it runs on their land, it is purely a private stream, and one which the company has a perfect right to control, so long as they do not infringe upon the rights of persons below them, in the use of the waters of the creek.

"In streams purely private, the enjoyment of rights in the bed of the stream is very important, as dams and other permanent erections may be necessary to get the value of their use, and it may sometimes be desir-

able to fence or close portions of them for shutting out or shutting in what needs such management.

"Every benefit which can be drawn from the use of private waters belongs to the private owners."

Sterling vs. Jackson, 69 Mich., 509.

It is my opinion that the Emens Brick and Tile company have a perfect right to erect a dam across Cedar creek on their lands at the point indicated on the map, if in so doing, they do not deprive persons below them of the use and benefit of the waters of the stream, in cutting off or decreasing its supply.

Respectfully,
A. A. ELLIS,
Attorney General.

Power of Auditor General to file petitions for sale of delinquent tax lands.

The Auditor General has a right, under the law, to file petitions for the sale of delinquent taxes for 1890 any time after the 1st day of July, 1892, and a notice may be given for the hearing at any regular term of the Circuit Court, which shall convene a sufficient length of time after July 1 to give the necessary notice.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 19, 1892.

HON. GEORGE W. STONE, *Auditor General, Lansing, Mich.:*

DEAR SIR—In reply to your question as to whether, under the existing law, you should wait until the year 1893 before filing petitions in the several Circuit Courts, looking to the sale and conveyance of tax lands which were returned to your office delinquent in 1890, or whether you have authority by law to proceed, as fast as practicable, and close up that class of business in your office, I would say:

At the time that Act No. 200 of the Public Acts of 1891 took effect, there had been returned and were unsold in your office, delinquent tax lands for the years 1889 and 1890.

Act No. 200 took effect on the second day of October, 1891, and must be considered as speaking from that day.

Section 111 of said act, among other things, provides:

"That all lands heretofore returned delinquent that have not been offered for sale shall be offered for sale by the Auditor General under Act No. 195 of the Laws of 1889, and all proceedings relative to the sale of such lands and the redemption thereof, and the issuing of deeds therefor, shall be conducted according to the provisions of said Act No. 195 of 1889, by the Auditor General.

Your authority, therefore, is embraced in Act No. 195 of the Public Acts of 1889.

Section 51 of Act No. 195 of the Public Acts of 1889 provides:

"Any lands, upon which taxes shall remain unpaid for more than one year from the first day of July next after their return to the Auditor General as delinquent therefor, shall be subject to sale in the manner hereinafter mentioned."

Section 52 of the same act provides that:

"As soon as practicable after the first day of July in each year, the Auditor General shall prepare and file in the office of the County Clerk in each county in which lands are to be sold under the provisions of this act, a petition addressed to the Circuit Court for said county in chancery, stating therein by apt reference to lists or schedules annexed thereto a description of all lands in such county upon which taxes have remained unpaid for more than one year from the first day of July after their return to the Auditor General, and the total amount of such taxes, etc."

Section 53 provides for the issuing of a subpœna and for default.

Section 54 provides for the publication of the petition, "at least once in each week for four successive weeks prior to the time fixed for the hearing thereof." Also a notice which shall state among other things, "that such petition will be brought on for a hearing and decree at the next term of such court, to be held at a time and place in such notice specified."

There is nothing in the law that limits the time at which the Auditor General can file the petition under section 52, except that it must be after the first day of July. Any time after that date and at any term of court which shall convene so that he can give the necessary notice, he is authorized, under the law, to file the petition and give notice of hearing.

The fact that a sale cannot take place until May, 1893, has nothing whatever to do with the right of the Auditor General to take the proper proceedings to obtain his decree.

You, therefore, have a legal right to proceed and finish up the business which is retained in your office, so far as preparing of the petitions, filing the same, and giving notice looking to the sale of lands returned delinquent for 1890, and said petitions may be filed any day after the first day of July, 1892, and a notice for hearing at any regular term of the Circuit Court of the county where the lands are situated, which shall convene a sufficient length of time after July first to give the necessary notice.

Respectfully,

A. A. ELLIS,

Attorney General.

Special elections—Two-thirds majority.

When an act requires a two-thirds majority of the electors of the township to vote in favor of a loan, before the township board will be authorized to issue the bonds of the township, all votes cast, including blanks must be counted.

Where there were 112 votes cast, and 72 were in favor of bonding, 35 against bonding, and 5 ballots were not marked at all, the proposition was defeated.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 28, 1892.

HON. JAMES E. HOLCOMB, *Wolverine, Mich.:*

DEAR SIR—Your favor stating that "at a special election called under local act No. 370, of the Local Acts of 1891, to vote on the question of bonding the township of Nunda for $5,000, 112 votes were cast, the contents of which were as follows: Seventy-two in favor of bonding, thirty-

five against bonding, and five ballots that were not marked so as to designate whether they were for or against the proposition," and asking for my opinion "whether, under such circumstances, the township board is authorized to issue the bonds," is received and considered.

Section one of the act gives the authority to the township board to issue bonds provided, "That a two-thirds majority of the electors of said township voting at an election to be called in compliance with chapter 19 of Howell's Statutes of Michigan, shall vote in favor of such loan in the manner specified in said act, and not otherwise."

And section 2 contains this clause: "If such loan be authorized by a two-thirds majority of such electors, said bonds may be issued, etc."

The election at which the above vote was had was one called especially for the purpose of voting on the question of bonding the township, and as the question of bonding was the only question to be voted on by ballot, all the ballots cast must be treated and considered as being ballots cast on, or in relation to, the question of bonding the township.

The whole number of votes polled was 112, as appears by the poll list, and ballots in the box; and in determining whether or not two-thirds have voted in favor of the question, all the ballots in the box must be taken into consideration.

Inasmuch as 72 votes are not two thirds of 112 votes, it necessarily follows that the proposition was lost.

Respectfully,
A. A. ELLIS,
Attorney General.

Taxation of shares in foreign corporations—Taxation of mortgages held by national banks.

Shares in foreign corporations, held by residents of this state, should be assessed to the stockholders or owners in the wards where they reside, without any deductions by reason of foreign assessment.

Mortgages held by national banks should be deducted from the value of the capital stock, and the remainder should be assessed to the stockholders in proportion to the number of shares held by each.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 30, 1892.

SETH KETCHAM, ESQ., *Supervisor, Charlotte, Mich.:*

DEAR SIR—Your favor of May 30th, asking whether "the shares in foreign corporations, except national banks, should be assessed to the stockholders, who reside in your city," is received and considered.

Section 2 of Act No. 200 of the Public Acts of 1891 classifies "all shares in foreign corporations, except national banks, owned by inhabitants of this state," as personal property.

Section 13 of the same act classifies such shares under the head of "personal property chattels," and subdivision 2 of that section provides that each person shall deliver to the assessing officer a statement of "All shares in foreign corporations, except national banks, and their cash value."

The general rule is, that where there is nothing in the law to the contrary, personal property has its *situs* at the residence of its owner, and is to be assessed there. Our law does not make any exceptions, by reason of the property being assessed in a foreign state, but it plainly provides in section 10 that: "All personal property, except as hereinafter provided, shall be assessed to the owner in the township of which he is an inhabitant, on the second Monday of April, of the year for which the assessment is made."

Section 11 of the same act specifies the classes of property that are excepted from the provision of section 10, and stocks in foreign corporations are not mentioned in the excepted classes.

I am, therefore, of the opinion that stocks in foreign corporations, except national bank stock, owned by residents of your city, should be assessed to such owners in the wards where they reside, without any deductions by reason of foreign assessment.

To your second question: "Should mortgages held by national banks be deducted from the value of the shares the same as real estate?" I would say that:

National banks are entitled to the same deductions as other banks. From the value of the capital stock, deduct the real estate and real estate mortgages, and the remainder will be the amount to be assessed to the stockholders in proportion to the number of shares held by each.

For illustration: If the capital stock is $50,000, and the surplus $10,000, the value of the stock would be $60,000. If the bank had $10,000 worth of real estate and $20,000 worth of real estate mortgages, you would add together the $10,000 and $20,000 and subtract the result, $30,000, from the $60,000. That would leave $30,000 to be assessed against the stockholders as personal property. This would be assessed on the basis of the face value of the capital stock, $50,000; or, in other words, the stock would be assessed at 60 cents on a dollar.

Respectfully,
A. A. ELLIS,
Attorney General.

Custody of city funds—Power of city treasurer over city moneys.

Under section 10, chapter 7 of the general law for the incorporation of cities, the city treasurer is the custodian of the moneys of the city, and he has a right to deposit it with a bank for safe keeping, but he would not, under the statute, have any legal right to loan the moneys of the city for the purpose of accumulating an interest fund for himself, nor for the benefit of the city. Hence the city council has no power, under the charter, to direct the treasurer to make any particular disposition of the money, except to pay it out in the manner provided by law.

STATE OF MICHIGAN,
ATTORNEY GENERAL'S OFFICE,
Lansing, May 30, 1892.

FRANK MC ELROY, ESQ., *Cashier, Marine City, Mich.:*

DEAR SIR—Your favor stating that "This bank was tendered a bid for the custody of the city funds, agreeing to give bonds as security," and asking "Can the city council accept the bid under the charter?" is received and considered.

Section 10 of chapter 7 of the general city act, under which your city is incorporated (Sec 2477 of Howell's Statutes), provides:

"The city treasurer shall have the custody of all moneys, bonds, mortgages, notes, leases and evidences of value belonging to the city. He shall receive all moneys belonging to and receivable by the corporation, and keep an account of all receipts and expenditures thereof, etc."

Sections 17, 18 and 19 of chapter 5 gives the council ample authority to prescribe the necessary bonds and to change them at any time when they are not sufficient.

Section 14 of chapter 7 provides:

"The city treasurer shall keep all moneys in his hands belonging to the city and to the public school, separate and distinct from his own moneys; and he is hereby prohibited from using, either directly or indirectly, the corporation moneys, warrants or evidences of debt, or any of the school or library funds in his custody or keeping, for his own use or benefit or that of any other person; any violation of this section shall subject him to immediate removal from office by the common council, who are hereby authorized to declare the office vacant, and to appoint his successor for the remainder of his term."

It seems quite clear from reading these sections that the treasurer is; *First*, given full authority to keep the moneys for the city; *Second*, that the council can require ample and sufficient bonds for the safe keeping of the money; and *Third*, that, under no circumstances, can he directly or indirectly, for himself or for the corporation, loan this money to any person or corporation, or use it in any other manner than to keep it on deposit for the use and benefit of the corporation.

Inasmuch as the treasurer is the custodian of these moneys, by virtue of the charter, and he, himself, has no authority to loan it or use it in any manner except as provided for by the charter, it cannot be said that the council have any authority to direct him to make any particular disposition of the money, except to pay it out in the maner provided by law.

The council have control of the finances and of all the real and personal property of the city corporation, "*except as may be otherwise provided by law.*" (See section 11 of chapter 8).

In the above cases, so far as moneys, bonds, etc., are concerned, the keeping of the same is especially, by law, vested in the city treasurer; and so far as the keeping and depositing of such funds are concerned, they are in the absolute control of the city treasurer, after he has given the required bonds, and so long as he keeps all moneys in his hands belonging to the city and the public school separate and distinct from his own moneys, and refrains from using them for his own use or for the use and benefit of any other person, otherwise than to pay them upon the orders and directions of the proper officers, he has, in my opinion, absolute and full control of the city moneys.

The moneys collected for the public use are collected to pay the expenses of the current year, and the law is framed on the theory that they will be safely kept in distinct and separate funds to be used for that purpose, and for that purpose only; and, while the city treasurer would have a right to deposit it with a bank for safe keeping, he would not, under the statute, have any legal right to loan this money for the purpose of accumulating an interest fund for himself, nor for the benefit of the city.

Respectfully,

A. A. ELLIS,

Attorney General.

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